

STORAGE NAME: h0787s1.jj
DATE: March 27, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUVENILE JUSTICE
BILL RESEARCH DOCUMENT & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 787
RELATING TO: Department of Juvenile Justice
SPONSOR(S): Committee on Juvenile Justice and Representative Putnam
STATUTE(S) AFFECTED: Section 20.316, F.S.
COMPANION BILL(S): CS/CS/CS/SB 570(I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Committee on Juvenile Justice YEAS 5 NAYS 0
- (2)
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- (4)
- (5)

I. SUMMARY:

The committee substitute makes sexual misconduct upon a juvenile offender by DJJ personnel a criminal offense, requires an incident report, and provides penalties for failure to report or falsely reporting an incident.

The committee substitute defines contraband to include: food, clothing, intoxicating beverages, controlled substances, and firearms or weapons. The committee substitute makes provisions for unauthorized contraband in juvenile detention and commitment facilities and provides penalties for violations of law. Any person in violation of the food and clothing subsection commits a third degree felony. Any person violating all other subsections commits a second degree felony.

The committee substitute changes the composition of the Juvenile Justice Standards and Training Commission to delete certain members, add a professional, include contract providers, and designate one business community member.

The committee substitute has an indeterminant but insignificant fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

History of Department of Juvenile Justice

Creation of the Juvenile Justice Review Task Force in 1989 led to several major reform initiatives and subsequent creation of a separate department to provide delivery of services to juveniles. After settlement of a federal class action lawsuit, multi-disciplinary assessments and a continuum of services were established to provide better delivery of services to juvenile offenders within the Department of Health and Rehabilitative Services (HRS). The Juvenile Justice Act of 1990 funded prevention and early intervention programs to serve delinquent and dependent youth. This initiative lacked progress, resulting in development of major reforms in 1993 to change the organizational structure of juvenile justice programs within HRS.

The Juvenile Justice Reform Act of 1994 transferred responsibility for implementation of programs and services to children-in-need of services and juvenile delinquents from HRS to the newly created Department of Juvenile Justice (DJJ). DJJ is a centralized, top-down agency, geographically organized into 15 districts, and five commitment regions. DJJ is responsible for planning, coordinating and managing juvenile justice programs within the 'juvenile justice continuum'. The continuum ranges from prevention, early intervention, and diversion programs to detention, commitment and after-care programs.

Juvenile Disposition

Under current law, at the disposition stage for juveniles who have been found to have committed a delinquent act the court is required to inform the juvenile of the purpose of the hearing and discuss with the juvenile several of the factors the court will use to determine the disposition. The court is also compelled to consider specific criteria when determining if the juvenile should be adjudicated delinquent. If the court decides to commit the juvenile delinquent to a DJJ program, this determination must be in writing or on the record of the hearing. The above procedures are set out in s. 39.052(4), F.S.

In court disposition hearings, youth committed to DJJ may be placed in one of five restrictiveness levels: level 2 non-residential, level 4 residential (low risk), level 6 residential (moderate risk), level 8 residential (high risk), and level 10 residential (serious risk). Placement is based upon information in the pre-disposition report (PDR) and statutory guidelines.

DJJ Programs and Facilities

Youth may be under supervision or under custody of DJJ in the pre-adjudication and pre-disposition stages when in detention care, or youth may be referred to DJJ supervision under the courts' powers of disposition. When the court adjudicates a juvenile as delinquent under the powers of disposition, and commits the juvenile to a facility, the juvenile is under active control of DJJ. In FY 95/96, 171,100 youth were referred to the juvenile justice system in Florida. The Juvenile Justice Estimating Conference projects 1.6 million children between the ages of 10 and 17 may be at risk

and a portion of these youth may require DJJ services by the year 2004, *JJAB Advisory Board 1997 Fact Book*.

Community control is the supervision of a 'juvenile found to be delinquent' by a DJJ case manager. A juvenile under supervision may be placed in a community control program when the court adjudicates the juvenile as a delinquent according to s. 39.054, F.S., or placed in a community control program as an alternative when adjudication is withheld according to s. 39.059, F.S. When the juvenile is adjudicated delinquent under s. 39.054, F.S., the court must impose a penalty order such as to pay restitution, perform community service, surrender his/her driver's license, adhere to a curfew, or participate in a substance abuse program.

Commitment facilities may be residential or non-residential and house offenders for day treatment up to 18 months. In disposition, the juvenile court judge sentences a juvenile offender to a commitment level and the department determines the location, and facility that will house the offender. Level 2 is a non-residential program serving youth who present a minimum risk. Level 4 is a residential program serving youth who present a low risk. Level 6 is a residential program designed for youth needing more supervision and security who present a moderate risk to themselves and the public. Level 8 is a residential program designed to serve youth who need a structured, secure, environment who present a high risk to themselves and others. Level 10 is the highest commitment level designed to serve youth who present a high risk to themselves and others, needing more services, the highest level of security and supervision.

Detention of a youth may be in home, non-secure, or secure for purposes of housing the youth pre-adjudicatory or post-disposition. Overcrowding is a problem in detention, and the numbers have increased rapidly with 49,988 admissions in FY 1996-97.

Aftercare is a program for juveniles exiting a program or facility which provides additional supervision, treatment, guidance and assistance in adjusting to the community. Differing aftercare programs correspond with individual juvenile needs, and previous commitment program services. While in aftercare the juvenile is under DJJ supervision.

Screenings as a Condition of Employment

Department of Juvenile Justice

Section 39.001, F.S., requires DJJ or the Department of Children and Family Services (CFS) to conduct level 1 screening for all personnel working for a provider under contract to provide youth programs. Volunteers working part-time for a provider and under supervision, may be exempt from the level 1 employment screenings. DJJ and CFS are required to conduct level 2 employment screenings for personnel working with youth and the screenings are to be conducted according to Chapter 435 guidelines. Exemptions from disqualification for employment may be granted by DJJ or CFS according to s. 435.07, F.S.

Section 39.076, F.S., allows DJJ to contract for delinquency services with other governments, departments, agencies and with private sector corporations, agencies, and individuals. Personnel working for a provider under contract with DJJ to provide

delinquency youth programs must be of good moral character and must undergo level 1 employment screening pursuant to ch. 435, F.S.

Under current administrative policy 1.010, DJJ provides disciplinary action for violation of the standard of conduct "unbecoming behavior, (defined as) . . . any willful action or conduct, whether occurring on or off duty . . ." A first occurrence results in a written reprimand, a second occurrence results in suspension of any length or dismissal, and a third occurrence results in dismissal.

General Law

Section 435.03, F.S., authorizes the Florida Department of Law Enforcement (FDLE) to conduct level 1 screenings. Level 1 screenings include employment history checks and criminal records checks. An employee must not have been found guilty or entered a plea to any offense listed in this subsection. Crimes include, but are not limited to, crimes relating to: assault upon a minor, battery upon a minor, sexual battery, lewd and lascivious behavior, lewd and indecent exposure, child abuse, or child neglect.

Section 435.04, F.S., authorizes FDLE to conduct level 2 screenings. These screenings of applicants include all of the elements of a level 1 screening plus fingerprinting, a juvenile records check, and a Federal (FBI) criminal records check. A licensed or registered employee of the state must submit an annual affidavit declaring compliance with this section.

Juvenile Justice Standards and Training Commission

Section 39.024, F.S., establishes the Juvenile Justice Standards and Training Commission to establish programs for juvenile justice training. The commission consists of 17 members responsible for developing a departmental training program. All DJJ program staff and provider staff are required to successfully complete the appropriate training program, based on their area of responsibility. In addition, judges, state attorneys, public defenders, law enforcement officers, and school district personnel may participate in these training programs.

The commission must design, implement, and evaluate programs for juvenile justice program staff for:

- Basic training as minimum training for all juvenile justice personnel;
- Advanced training to enhance the skills necessary for job performance; and
- Career development to prepare personnel for promotions.

The commission is also encouraged to establish juvenile justice training courses intended to provide for the public safety and well-being of both citizens and juvenile offenders. [see s. 39.024, F.S.]

Sexual Misconduct by Correctional Officers

In addition to general law provisions, s. 944.35, F.S., provides criminal penalties for 'sexual misconduct' when the act is between a Department of Corrections (DOC) employee and an inmate. This law makes the act a third degree felony.

Under s. 944.35, F.S., employees with knowledge or suspicion of sexual misconduct are required to file a report. Failing to file a report, filing a false report, coercing a person filing a report, or threatening a person filing a report are criminal offenses.

The following acts do not constitute sexual misconduct under s. 944.35, F.S.:

- Acts done for a bona fide medical purpose, including internal body cavity searches for security reasons
- Sexual acts between department employees who are legally married to inmates or offenders on community supervision

Penalties are established for corrections officers committing sexual battery upon an inmate in s. 794.011, F.S. Under s. 794.011(4), F.S., committing sexual battery upon a person 12 years of age or older without that person's consent is a first degree felony. This section applies to certified correctional officers, correctional probation officers, or any other persons in a position of control or authority in a probation, community control, control release, detention or custodial setting. Acting in a manner leading the victim to reasonably believe such person is in a position of control or authority is a factor in the offense.

Sexual Misconduct by DJJ Employees

Current statutory language makes no specific provisions for sexual misconduct between DJJ staff and juvenile offenders under custody or supervision of DJJ. However, current general law establishes penalties for a person over 24 years to engage in sexual intercourse with a person 16 or 17 in s.794.05, F.S.; people who commit unnatural and lascivious acts with another person in s. 800.02, F.S.; and people who commit lewd, lascivious, or indecent acts upon a child under 16 years of age in s. 800.04, F.S.

Chapter 800, F.S., states unnatural and lascivious behavior with another person is a second degree misdemeanor, exposure of sexual organs is a first degree misdemeanor, and lewd, lascivious or indecent behavior upon or in the presence of a minor under the age of 16 a second degree felony.

DJJ administrative policy 1.0101(27), addresses failure to maintain a professional relationship with juveniles in custody. A violation results in a written reprimand on the first occurrence, and dismissal upon the second occurrence.

Contraband within DOC Facilities

Current law makes no specific provision for introduction, removal, or possession of the contraband within juvenile detention and commitment facilities (DJJ). However, provisions are made for the introduction, removal, or possession of contraband within correctional facilities (DOC).

Section 944.47, F.S., provides it is a third degree felony to transport or attempt to transport the following articles onto grounds of a corrections facility (DOC) unless authorized by the commanding officer:

- Any written communication or currency
- Any article of food or clothing

This section makes it a second degree felony for introduction, removal, or possession of the following contraband onto grounds of a corrections facility:

- Any intoxicating beverage
- Any controlled substance as defined in s. 893.02(4), F.S., prescription, or a nonprescription drug with drug effects
- Any firearm, or weapon, or explosive

The court has interpreted s. 944.47, F.S., based upon dictionary definitions of 'currency' as "the money or other commodity which is in circulation as a medium of exchange" and 'clothing' as "things worn to cover the body and limbs", (*State of Florida v. Ronald Becton*). The opinion differentiates jewelry and clothing, excluding jewelry from the meaning of clothing and contraband.

Contraband within DJJ Facilities

Current law makes no specific provision for introduction, removal, or possession of the contraband within juvenile detention and commitment facilities. The department has administrative policies that provide guidelines for unauthorized contraband within certain types of facilities, but there are currently no laws or administrative codes that regulate contraband within DJJ facilities.

DJJ policy in the Residential Commitment Services Manual directs residential commitment programs to implement policies allowing confiscation and disposal of contraband, authorizing searches, and requiring training in search methods and procedures. Detention Manual policy allows searches for contraband, defines contraband, provides visitation policies in relation to contraband, and clarifies the items not permitted on detention facility grounds.

Quality Assurance

To comply with annual reporting procedures under s. 39.021, F.S., DJJ conducts a comprehensive evaluation of programs and produces an Annual Quality Assurance Report with conclusions and recommendations for improvements in juvenile justice programs.

According to the DJJ, 1996 Quality Assurance Report, facilities that rated marginally or below satisfactory in performance standards consistently reported difficulty with staff training throughout the juvenile justice system. Standards for employee training and staff development remain to be an area with a low rate of satisfaction. The report makes recommendations to continue training and staff development in all areas of the department.

A review of 28 detention facilities report 53% are marginal and 11% are below satisfaction, a 5% decline in the rate of overall performance. Recommendations for detention facilities include training detention staff to use effective behavior management techniques. Recommendations for evaluation of two maximum risk residential programs include training staff in behavior management techniques.

B. EFFECT OF PROPOSED CHANGES

Sexual Misconduct and DJJ Employees

The committee substitute defines sexual misconduct to mean "fondling the genital, groin, inner thigh, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object." The committee substitute defines employee to mean paid staff, volunteers, and interns.

If an employee engages in sexual misconduct with a juvenile offender detained, supervised, or committed to the care of DJJ, violation of law is punishable as a second degree felony.

Consent is not a defense. The committee substitute excludes an employee legally married to a juvenile and excludes an employee with lack of knowledge that a juvenile is in custody or under supervision.

In the event a DJJ employee witnesses sexual misconduct or suspects that sexual misconduct has occurred, the DJJ employer must file a report. The report shall be filed with the Inspector General by calling the hotline and a written report shall be filed with copies to the program director and the district juvenile justice manager. Failure to file a report is a first degree misdemeanor. Knowingly or willfully filing an inaccurate, incomplete or untruthful report is a first degree misdemeanor. Knowingly or willingly, coercing or threatening someone who attempts to file a report is a third degree felony.

Contraband within DJJ Detention and Commitment Facilities

This committee substitute defines and prohibits the introduction, removal or possession of the following contraband in juvenile detention and commitment facilities unless authorized:

- Any article of food or clothing
- Any intoxicating beverage or beverage causing like effect
- Controlled substances as defined in s. 893.02(4), prescription or nonprescription drugs causing a similar effect
- Firearms, weapon, or explosive

Any person violating prohibition of food or clothing commits a third degree felony and all other violations of this section are second degree felonies.

Juvenile Justice Standards and Training Commission

The committee substitute changes the composition of the Juvenile Justice Standards and Training Commission by deleting requirements to appoint one member who is a departmental employee, and a state owned and state operated facility representative, and an intake counselor or case manager. The committee substitute requires that one member of the commission is a professional and one is representative of the business community.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly?

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The committee substitute requires an employee to report known or suspected sexual misconduct.

(3) any entitlement to a government service or benefit?

No, the committee substitute does not alter entitlement to any government services or benefits.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

The family of a juvenile delinquent may be evaluated by the arresting officer, the court, and/or the DJJ intake officer. Many facilities include family evaluation during detention and commitment.

- (2) Who makes the decisions?

The court determines sanctions during the disposition hearing based upon the pre-disposition report prepared by a DJJ case manager.

- (3) Are private alternatives permitted?

Private facilities contract with DJJ to provide services to children in need of services and juvenile delinquents.

- (4) Are families required to participate in a program?

Parents of a juvenile delinquent may be required to participate in counseling, take a parenting course or make payment for services.

- (5) Are families penalized for not participating in a program?

No.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A.

- (2) service providers?

N/A.

- (3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

SECTION 1. Amending the Juvenile Justice Standards and Training Commission composition to add one professional, delete certain members, and designates one member shall be of the business community.

SECTION 2. Defining and prohibiting sexual misconduct between an employee of DJJ or a provider and a juvenile offender under the custody and control of DJJ; creating a felony of the second-degree for engaging in sexual misconduct; providing for certain exceptions; prohibiting the employment of any person who has engaged in sexual misconduct with a juvenile offender; requiring an employee who witnesses unlawful abuse or sexual misconduct or suspects that it has occurred to report the incident to the inspector general, facility superintendent, and district juvenile justice manager; providing that it is a first-degree misdemeanor for an employee who fails to report unlawful abuse or sexual misconduct; providing that is a third-degree felony to coerce or threaten any person to alter testimony or a report.

SECTION 3. Prohibiting the introduction to, removal from, or possession of contraband within a DJJ juvenile detention facility or any commitment program; specifying contraband to include food or clothing, intoxicating beverages, controlled substances as defined in s. 893.02(4), F.S.; and any firearm, weapon or explosive substance; making it a third-degree felony for violating this section related to food or clothing; making it a second-degree felony for violating this section related to any other defined contraband.

SECTION 4. Creates an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

An indeterminate but insignificant cost may be associated with establishing reporting procedures, and development of training courses.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

No revenues are generated by this bill. Expenditures may be indeterminate but insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

To the extent local and municipal governments provide juvenile justice services and programs, relative costs may be incurred to provide training courses for employees.

2. Recurring Effects:

See (B)1.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

This committee substitute clarifies sexual misconduct and defines contraband within private and public facilities. To the extent that these policies raise the standard of conduct and lower the tolerance for inappropriate behavior, private enterprise may benefit and see an increase in the quality of employee performance.

3. Effects on Competition, Private Enterprise and Employment Markets:

See (C)2.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The committee substitute does not require local governments to expand funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce the revenue raising authority of local governments.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The committee substitute does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from the original bill in the following ways:

- deletes the inspector general section of the bill providing the duties and responsibilities of the DJJ inspector general;
- deletes the authorized use of physical force section of the bill; deletes related provisions regarding reporting procedures; and deletes related language; and
- changes the composition of the Juvenile Justice Standards and Training Commission to delete certain members and add others.

VII. SIGNATURES:

COMMITTEE ON Juvenile Justice:

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