

STORAGE NAME: h0709a.flc

DATE: March 31, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 709

RELATING TO: Children in Need of Services

SPONSOR(S): Representative Bainter

COMPANION BILL(S): SB 1084

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

- (1) Family Law and Children YEAS 5 NAYS 0
 - (2) Juvenile Justice
 - (3) Criminal Justice Appropriations
 - (4)
 - (5)
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I. SUMMARY:

HB 709 modifies current statutory provisions governing the implementation of the physically secure pilot program established to serve certain youth adjudicated as children in need of services (CINS) including:

- changing the eligibility criteria for placement in the physically-secure facility to more closely match legislative intent relating to services for CINS children;
- expanding the number of circuits covered by the pilot program from one circuit to five circuits;
- extending the allowable length of placement from 5 days for an initial placement and 15 days for subsequent placements to 90 days. An additional 30 days is authorized under certain specified circumstances;
- providing an opportunity for CINS children in the circuits served by the physically-secure facility to waive the right to counsel;
- specifying conditions under which a CINS child would be transferred to the Department of Children and Family Services; and
- providing reporting requirements for the Department of Juvenile Justice and the Juvenile Justice Accountability Board.

The bill is not expected to have a fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Children in Need of Services

Under current Florida law, "status offenders" are referred to as Children in Need of Services (or CINS children) and are subject to the provisions of chapter 984, Florida Statutes. Section 984.03(9), Florida Statutes, 1998 Supplement, defines "child in need of services" as:

A child for whom there is no pending investigation into an allegation of abuse, neglect, or abandonment, no referral alleging the child is delinquent, or no current supervision by either the Department of Juvenile Justice or the Department of Children and Family Services for an adjudication of delinquency or dependency, and the child is found by the court:

- to have persistently run away from the parents or legal custodians despite reasonable efforts to remedy the conditions contributing to the behavior;
- to be habitually truant from school, while subject to compulsory school attendance despite reasonable efforts to remedy the situation; or
- to have persistently disobeyed the reasonable and lawful demands of the parents or legal custodians and to be beyond their control despite reasonable efforts for remedy.

The Department of Juvenile Justice is responsible for providing an array of services to CINS children and their families which the department currently implements statewide through contracts with 26 private providers associated with the Florida Network of Youth and Family Services. Section 984.04(1), Florida Statutes, 1998 Supplement, provides that it is the intent of the Legislature to address the problems of families in need of services (FINS families) by making available to them an array of services designed to preserve the unity and integrity of the family and to emphasize parental responsibility for the behavior of their children. Services provided by the Network agencies include outreach and prevention, centralized intake, individual, group, and family counseling, and temporary residential services.

Physically-Secure Facility

Providing for the physically-secure placement of children who have not been charged with a criminal offense has been the subject of much debate over time. Opponents maintain that physically detaining non-delinquent children is overly severe and could be counterproductive to the goal of preventing more serious behaviors. Proponents believe that some status offenders, particularly those who are chronic runaways, are so self-destructive and intent on resisting help that the only way to intervene on their behalf is to physically detain them.

In an attempt to address the needs of particularly troubled children and families for whom traditional services are unsuccessful, the 1997 Legislature supplemented the existing array of services for this particular population with a longer term, staff-secure residential placement that is available statewide for CINS children who are chronic runaways or who have been "locked out" of their homes. In addition, a physically-secure placement was established as a pilot in the Seventh Judicial Circuit which includes Flagler, Putnam, St. Johns, and Volusia Counties. This physically-secure facility in Volusia County, the Discovery Center, is being tested as a last resort option for certain CINS children for whom other interventions have failed.

The law authorizes the court to place a child who has been adjudicated within the Seventh Judicial Circuit as a CINS child in the physically-secure facility if the child has run away from a staff-secure facility or has committed at least two prior acts of direct or indirect contempt. Section 984.226(4), Florida Statutes, 1998 Supplement, further provides that:

while in the physically-secure facility, the child shall receive appropriate assessment, treatment, and educational services that are designed to eliminate or reduce the child's truant, ungovernable, or runaway behavior. The child and family shall be provided with family counseling and other support services necessary for reunification.

The length of stay is limited to 5 days for the first placement and 15 days for subsequent placements.

Following passage of the legislation authorizing the physically-secure pilot, the Department of Juvenile Justice selected the provider through a competitive procurement process, the contract was awarded to the ACT Corporation of Volusia County. The facility began operation in August, 1998, and since that time, five children have been placed there. One of those children has been placed twice. All children have been placed for the maximum number of days allowed under current law, and the discharge destination for all of the children has been to their homes.

The Department of Juvenile Justice's contract with ACT Corporation provides for the department to pay a fixed price of \$90.98 per day for 15 beds, whether or not the beds are filled. They are also authorized to pay \$90.98 for up to 15 additional beds, if utilized. To date, the department has expended \$317,975 for the facility. The total budget of this contract is \$996,231.

Due Process Requirement

Detaining a non-delinquent child in a physically-secure setting requires strict compliance with a number of federally mandated protections, including due process protections which must be assured at each step in the CINS process, not just at the end of the continuum when a child is subject to being placed in the physically-secure facility. Federal law specifies that CINS children have "the right to legal counsel (42 U.S.C. 5601). Section 984.226(1), Florida Statutes, 1998 Supplement, provides that the child must be represented by counsel at each court appearance. The department reports that all affected children in the Seventh Judicial Circuit have been provided with the right to counsel, pursuant to federal law, but that waiver of those rights has been allowed based on the judgment of the court. This would appear to provide a conflict with Florida law.

Required Evaluation

Section 984.226(6), Florida Statutes, 1998 Supplement, provides that the Juvenile Justice Advisory Board (now, the Juvenile Justice Accountability Board or JJAB, shall monitor the operation of the pilot program and issue a preliminary report to the Legislature by December 1, 1998, and a final report jointly with the Department of Juvenile Justice by December 1, 1999. Although the program had been operational only a short period of time and had only three children placed at the time of the evaluation, the JJAB issued their preliminary report. Among the findings were the following:

- "Five and fifteen day lengths of stay are not sufficient for effective planning to occur and therapeutic intervention to begin ... and it is not long enough to start any meaningful work with the family and child relationships that will need to be the focus of their work."
- "The CINS caseloads ... suggest that too few children will be so troublesome as to require placement in the physically secure shelter in numbers sufficient to fill the current facility, even to its minimum of 15 available beds."

B. EFFECT OF PROPOSED CHANGES:

HB 709 provides for modifications to the law governing the physically-secure pilot program as follows:

- **The placement criteria are modified:** An adjudicated CINS child could be placed by the court in the physically-secure facility if he or she fails to appear for placement in the 90 day staff-secure shelter as provided for in s. 984.225, Florida Statutes, 1998 Supplement, or fails to comply with any other provision of a valid court order relating to such placement and, as a result, is found to be in direct or indirect contempt of court, or runs from such staff-secure shelter following placement.

This change makes placement in the physically-secure facility more clearly a placement of last resort, applying only when the less restrictive residential placement has failed, which is more consistent with the stated intent of the Legislature relating to services for CINS children.

- **The geographic boundaries are broadened:** Children who are adjudicated CINS children in the Third, Fourth, Fifth, Seventh, and Eighth Judicial Circuits would be eligible for placement in the physically-secure facility, rather than children only in the Seventh Circuit. Based on utilization to date, the need to expand the number of circuits eligible to use this facility is clear, and the proposed expansion of the number of circuits should result in a truer test of the pilot program.

- **The allowable length of placement is extended:** Instead of the current 5 day limit on an initial placement and a 15 day limit on subsequent placements, the court would be able to place children in the facility for up to 90 days (or 120 days under certain specified circumstances). The court is directed to review the child's placement once every 45 days, and the department or its representative is authorized to advise the court at any time that a child is ready to go home or is unlikely to benefit from continued placement in the facility.

The longer placement would allow the statutory requirement for appropriate treatment and educational services to be met. The department reports that the facility's therapeutic programs are excellent.

The bill also provides that the current requirement that all CINS children in the circuits served by the physically-secure facility be represented by counsel at each court appearance is amended to allow the child to waive the right to counsel if it can be demonstrated to the court by clear and convincing evidence that the child knowingly and intelligently made the decision to waive.

The bill directs the court to determine whether a child's parents have reasonably participated in and financially contributed to the child's counseling and treatment program and whether the department's efforts to reunite the family have been reasonable. If the court finds inadequate support or participation by the parent, the court is to direct that the child be handled as a dependent child and transfer jurisdiction of the child to the Department of Children and Family Services.

The JJAB is required to submit another preliminary report on the implementation and operation of the pilot program to the Legislature by August 1, 1999, and to submit a report on the effectiveness of the pilot by January 15, 2000. The department is required to submit a report to the Legislature and the JJAB summarizing departmental efforts to implement the pilot.

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?

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

The court, the Department of Juvenile Justice, and possibly, the Department of Children and Family Services.

(2) Who makes the decisions?

The above.

(3) Are private alternatives permitted?

N/A

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

Yes, if court ordered.

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

N/A

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

N/A

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?

The Department of Juvenile Justice and/or the Department of Children and Family Services.

D. STATUTE(S) AFFECTED:

Amends ss 984.225 and 984.226, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 984.225, Florida Statutes, 1998 Supplement, to reflect that CINS children under this section are “placed” rather than “committed” and to clarify that those placements are in a staff-secure shelter. It also corrects a statutory reference.

Section 2. Amends s. 984.226, Florida Statutes, 1998 Supplement, to provide that:

- the physically-secure facility pilot created by the 1997 Legislature be broadened to include the Third, Fourth, Fifth, Seventh, and Eighth Judicial Circuits;
- the right to counsel of a CINS child may be waived if it can be clearly and convincingly demonstrated to the court that the child has knowingly and intelligently waived that right;
- when a child is adjudicated as a CINS child by a court in any of the five judicial circuits included in the pilot, the court may order the child placed in a physically-secure facility if the child has failed to appear for placement in a staff-secure shelter or has failed to comply with any other provision of a valid court order relating to such placement, and, as a result of such failure has been found to be in either direct or indirect contempt of court; and

- the court would be able to place children in the facility for up to 90 days (or 120 days under certain specified circumstances). The court is directed to review the child's placement once every 45 days, and the department or its representative is authorized to advise the court at any time that a child is ready to go home or is unlikely to benefit from continued placement in the facility.

The court is to determine whether a child's parents have reasonably participated in an financially contributed to the child's counseling and treatment program and whether the department's efforts to reunite the family have been reasonable. If the court finds inadequate support or participation by the parent, the court is to direct that the child be handled as a dependent child and transfer jurisdiction of the child to the Department of Children and Family Services.

If the child requires residential mental health treatment or residential care for a developmental disability, the court shall refer the child to the Department of Children and Family Services for those services.

The section also provides that the JJAB submit another preliminary report on the implementation and operation of the pilot program to the Legislature by August 1, 1999, and to submit a report on the effectiveness of the pilot by January 15, 2000.

Section 3. Provides for the Department of Juvenile Justice to submit a report by June 15, 1999, to the President of the Senate, the Speaker of the House of Representatives, and the Juvenile Justice Accountability Board that addresses the efforts of the department to implement the pilot program authorized in s. 984.226, Florida Statutes. The report is to include the following for each judicial circuit included in the pilot:

- the number of youth who have been adjudicated children in need of services since July 1, 1998;
- the number of available staff-secure shelter beds;
- the number of youth placed in staff-secure shelter beds since July 1, 1998 and the average length of stay;
- the number of physically secure facility beds available;
- the number of youth placed in physically secure facility beds since July 1, 1998, and the average length of stay;
- the efforts that have been made by the department in association with other specified related groups and individuals to ensure the appointment of counsel in CINS cases as appropriate under the provisions of s. 984.266, Florida Statutes; and
- the efforts made by the department to educate the public concerning the availability of and access to services to meet the needs of families with children who are runaways, truants, or ungovernable.

Section 4. Provides an effective date of upon the act becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

The expansion of the geographic region from which the pilot program amended by this bill may draw will increase transportation costs of the Department of Juvenile Justice. In addition, the department estimates that increasing the pool of children eligible for placement in the physically-secure facility will increase their need for attorney representation at CINS/FINS proceedings. The annual cost for transportation and legal representation is estimated at approximately \$100,000 annually. Since the department is fully funded for 30 beds and has an occupancy rate of less than 20 percent, these costs can be absorbed within current resources in FY 1999-2000.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Since the bill expands the number of judicial circuits to be served by the pilot and since considerable emphasis is placed on family involvement and family reunification, it is crucial that the expansion not make it overly difficult or impossible for families to travel to the facility to participate in counseling and other available activities with their children. Among the four additional circuits proposed by the expansion, the Third Circuit appears to present the most problems in that regard. The average distance from each of the circuit's seven county seats to the facility is 157 miles.

The bill provides that utilization of the physically-secure facility is limited to children who have previously been ordered to a staff-secure bed in one of the covered judicial circuits. Based on the number and the utilization of staff-secure beds in the five judicial circuits specified in the bill, on the percentage of children ordered to those beds who meet the other criteria for placement in the physically-secure facility, and on a projected length of stay of 90 days, it is projected that 34 children would be placed in the facility in FY 1999-2000. Full utilization for the 15 beds would be 60 children.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The **Committee on Family Law and Children** adopted 6 amendments to the bill during the March 30, 1999 committee meeting. They are summarized as follows:

- Provides grammatical clarification that one pilot serves all the circuits, rather than each circuit having its own pilot.
- Provides that certain CINS children from the Fourth, Fifth, Seventh, Eighth, Ninth, and Eighteenth Judicial Circuits may be included in the pilot program.
- Provides that certain CINS children from the Fourth, Fifth, Seventh, Eighth, Ninth, and Eighteenth Judicial Circuits may be included in the pilot program.
- Corrects a statutory reference.
- Changes the date that DJJ is to submit a report to the legislature and the JJAB from June 15, 1999 to August 1, 1999.
- Provides that for CINS children eligible for the pilot placement, the parent or legal guardian of the child must be included in the decision to waive counsel for the child.

VII. SIGNATURES:

COMMITTEE ON Family Law and Children:

Prepared by:

Staff Director:

Carol E. Preston

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