

STORAGE NAME: h1677s1a.cj

DATE: April 18, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: CS/HB 1677

RELATING TO: Children/Secure Facility

SPONSOR(S) Committee on Juvenile Justice and Representatives Merchant and Patterson

TIED BILL(S):

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

- (1) JUVENILE JUSTICE YEAS 10 NAYS 1
 - (2) JUDICIARY YEAS 9 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS YEAS 7 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

The bill amends s. 984.226, F.S., to expand the physically secure pilot program currently operating in the Seventh Judicial Circuit. In December 1999, the Juvenile Justice Accountability Board, together with the Department of Juvenile Justice, submitted the "Final Report on the CINS Physically-Secure Pilot Program." The bill incorporates the following recommendations from the report:

1. Expand the program approach for CINS youth statewide;
2. Clarify and simplify the basis upon which a court may order CINS placement;
3. Extend the length of placement for a time period not exceeding 120 days;
4. Provide for representation or waiver of the right to counsel at every CINS proceeding;
5. Require family participation in counseling and financial contributions to the cost of placement;
and
6. Require periodic court review of program progress.

The bill will not have a fiscal effect on state or local government.

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

B. PRESENT SITUATION:

Florida law draws a distinction between dependent youth, as defined in s. 39.01(14), F.S., delinquent youth, as defined in s. 985.03(10), F.S., and “children in need of services,” as defined in s. 984.03(9), F.S. Section 985.03, F.S., clearly distinguishes a “child in need of services” from a “child who has been found to have committed a delinquent act.” The term “delinquent child” generally refers to a child found to have committed an act that would be a crime if committed by an adult. By contrast, a “child in need of services” is one who has been determined by the court to be either ungovernable, a runaway, or a habitual truant.

In 1997, the Legislature directed the Department of Juvenile Justice (“DJJ”) to establish a pilot program to effect physically secure placement of certain “children in need of services” (“CINS”). Section 984.226(a), F.S., provides for the pilot program to be established within a single judicial circuit for the purpose of operating one or more physically secure facilities within existing resources as an alternative to placement in a staff-secure facility. This pilot program was established in the Seventh Judicial Circuit, which encompasses Flagler, Putnam, St. Johns, and Volusia counties. The pilot facility is the Discovery Center, located in Daytona Beach. According to DJJ, the program has been underutilized. Under the pilot program, only 9 children were served in a facility with a 15-person capacity at a per child cost of \$58,056. DJJ attributes the underutilization to the program’s eligibility requirements and geographic location.

Section 984.226(2), F.S., authorizes the court to place a child who has been adjudicated a “child in need of services” (“CINS”) in a 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. Currently, the length of placement is limited by statute to 5 days for a first placement and 15 days for subsequent placements.

Under current law, the child must be afforded all rights of due process required under s. 985.216, F.S., prior to placement in a physically secure facility. Section 984.226, F.S., requires each child to be represented by counsel at each court appearance, and requires the court to appoint counsel if the child is indigent. However, the court may request reimbursement of attorney’s fees and costs from any non-indigent parent. 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. In addition, the child and family must be provided with family counseling and other support services necessary for reunification under s. 984.226, F.S.

Section 984.226, F.S., required the Juvenile Justice Accountability Board ("JJAB") to monitor the operation of the Discovery Center pilot program and to issue a preliminary report to the Legislature by December 1, 1998, and to issue a final report jointly with DJJ by December 1, 1999. In preparing the report entitled, "Final Report on the CINS Physically-Secure Pilot Program," ("Final Report") JJAB and DJJ interviewed program staff, judges from the Seventh Judicial Circuit, and youth served by the program. JJAB and DJJ concluded that "[some] youth have been placed and released with some apparent success." Final Report, p. 23. Program youth described the program as "a more positive and effective experience in comparison to other services they had received from other shelters." However, JJAB and DJJ noted that the program only served a total of 9 youth between the time it opened in August 1998 and July 1999. Since the program only served a small population, JJAB and DJJ questioned the level of the reliability about any conclusions concerning the program's success.

Multiple factors were identified as contributing to the inability to evaluate whether the pilot program was a true test of the physically secure placement concept. See id. The prescribed length of stay was determined to be too brief to provide effective assessment, family stabilization, and necessary services. See id. at p. 25. Although CINS youth may be detained in a staff-secure shelter for up to 90 days pursuant to s. 984.225, F.S., s. 984.226, F.S., limits placement in a physically secure shelter to 15 days. One Volusia County judge, who placed eight of the nine youth ordered to the program, acknowledged initial opposition to the secure-placement concept. Id. at p. 22. The judges interviewed for the Final Report expressed frustration over the limited duration of placement. Id. The judges recommended new procedures for making a placement decision and extending the placement up to 90 days.

Interviews with program staff revealed another contributing factor to the difficulty of evaluating whether the pilot program was a true test of the physically secure placement concept. Program staff expressed opinions that the behavior management program was successful because youth felt involved in the process. Id. However, staff indicated some difficulty engaging parents and caregivers in the treatment process. Id. Although family participation was considered "a vital element of the treatment process," geographic proximity sometimes proved to be a hurdle to participation. See id. Obtaining a child's school information was also complicated by geographic proximity. See id. at p. 21.

All of these factors were identified as reasons for underutilization of the program. See id., pp. 26 - 28. The Final Report indicated that the costs associated with the pilot program are too high for the number of youth actually served. Id. at p. 24. By contract, DJJ pays \$522,500 annually for 15 beds. Id. During the first year of operation, 9 youth were served by the program. Id. Thus, the average cost per youth served was \$58,056. Id.

In order to maximize use of funds already appropriated for this purpose in the most efficient and effective manner possible, the Final Report included the following recommendations:

1. Expand the program approach for CINS youth statewide by contracting placement at juvenile assessment centers, juvenile crisis stabilization units, staff-secure shelters, or other appropriate facilities;
2. Clarify and simplify the basis upon which a court may order CINS placement;
3. Extend the length of placement for a time period not exceeding 90 days;
4. Provide for representation or competent waiver at every CINS proceeding;

5. Require family participation in counseling and financial contributions to the cost of placement, based on ability to pay; and
6. Require periodic court review of program progress and termination of placement when treatment goals are achieved.

See id. at pp. 26-28.

C. EFFECT OF PROPOSED CHANGES:

The bill amends s. 984.226, F.S., following the recommendations of the Final Report. The pilot program in the Seventh Judicial Circuit is expanded to allow statewide placement in "physically secure settings." This may be accomplished by using the \$1.1 million presently appropriated for the pilot program to contract services for placement of CINS youth at juvenile assessment centers, juvenile crisis stabilization units, staff-secure shelters, or other appropriate facilities.

The bill follows the recommendation of the Final Report by clarifying and simplifying the placement procedures. Under current law, there is ambiguity as to whether the court may order placement upon a second finding of contempt or whether a third finding is required. Section 984.226(2)(b), F.S., provides that a CINS youth may be placed in a physically secure shelter if the department, or an authorized representative of the department, verifies to the court that the child has committed at least two prior acts of direct or indirect contempt. However, s. 984.226(3), F.S., provides that a child may be placed in a physically secure facility for up to 5 days for the first commitment and up to 15 days for a second or subsequent commitment. The bill clarifies the circumstances that allow the court to place an adjudicated CINS child in a physically secure setting. The bill amends current s. 984.226(2), F.S., specifying that once a child has been adjudicated a "child in need of services," the court may place that child in a physically secure setting if the child has:

- (a) failed to appear for placement in a staff-secure shelter, or failed to comply with a valid court order relating to placement and as a result has been found to be in direct or indirect contempt of court; or
- (b) run away from a staff-secure shelter following such placement.

The bill requires DJJ or an authorized representative to verify bed availability. If a bed is not available, the child will go on a waiting list for placement in the physically secure setting.

The bill adopts the Final Report recommendation and extends the length of CINS secure-placement for a time period of 90 days. However, the court may extend placement an additional 30 days if the court finds that reunification with the family could be achieved within that extension period. It is anticipated that this amendment will facilitate placement of CINS youth a sufficient amount of time for the child and family to receive meaningful benefit of services.

The bill addresses the recommendation of the Final Report that legal representation or competent waiver be provided or permitted at every CINS proceeding. The bill adds a new subsection (2) to s. 984.226, F.S. The new subsection expressly provides that the child must be represented by counsel unless the court finds, and the record affirmatively demonstrates by clear and convincing evidence, that the child knowingly and intelligently waived the right to counsel after being fully advised by the court. This is consistent with current practice in juvenile delinquency court, where the court may make inquiry and determine that the child is able to proceed without counsel -- even if the proceeding results in commitment and placement

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in a residential program. See Fla.R.Juv.P. 8.920(d)(5). Under the bill, the court retains the authority to appoint counsel for the child. Nothing precludes the court from requesting reimbursement of attorney's fees and costs from the non-indigent parent or legal guardian. A child may waive the right to counsel if that waiver is made knowingly and voluntarily. J.G.S. v. State, 435 So.2d 942 (Fla. 2d DCA 1983). See also s. 985.203, F.S. (allows for waiver of right to counsel in delinquency proceedings).

The bill adopts the Final Report recommendation, providing that the court shall review the child's placement once every 45 days as provided in s. 984.20, F.S. The bill allows that at any time during the placement of a CINS child in a physically secure setting, DJJ or an authorized representative may submit to the court a report that recommends: the child has received all services available and is ready for reunification with a parent or guardian; or the child is unlikely to benefit from continued placement and is more likely to have his or her needs met in a different type of placement.

The bill provides new subsection (5) and (6) for s. 984.226, F.S. The new subsections require that the child receive appropriate assessment, treatment, and educational services that are designed to eliminate or reduce the child's truant, ungovernable, or runaway behavior. If the court determines that it is necessary, the child may also receive residential treatment for mental health or developmental disability. In addition, the child and family must be provided with family counseling and other support services necessary for reunification. The Final Report recommended that family participation in counseling and financial contributions to the cost of placement, based on ability to pay be required. The bill authorizes the court to transfer a CINS case to dependency court for proceedings under ch. 39 if the court determines that the parent or caregiver has failed to participate in services or to contribute financially.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the department of Juvenile Justice, current funds dedicated to the pilot project for secure shelter are not being fully utilized. The bill, therefore, will provide for more complete utilization of existing resources. In addition, the bill allows, rather than mandates, the establishment of physically secure placements. Existing statutory language provides that establishment of secure shelters are contingent upon Legislative appropriations. Further, existing statutory language only allows the court to order placement in a secure shelter if the department certifies that a bed is available.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of municipalities or counties to raise revenues in the aggregate.

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

The bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

According to the Final Report prepared by the Department of Juvenile Justice, all children who participated in CINS proceedings waived their right to counsel. However, s. 984.226(1), F.S., expressly requires that each child be represented by counsel at each court appearance. Although the proceedings relating to delinquency do not require representation of counsel, and allow for waiver of the right, the children involved in CINS proceedings are not delinquents. It may be that these children, who may be runaways, need the protections afforded by representation in a manner that delinquents, who may have more knowledge and experience of the juvenile justice system, do not.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

AMENDMENT BY COMMITTEE ON JUVENILE JUSTICE

The bill was amended by a strike-everything amendment, which was offered by the sponsor. The purpose of the strike-everything amendment was to conform the bill with recommendations of the "Final Report on the CINS Physically-Secure Pilot Program." The amendment conforms the bill to language found in Committee Substitute for Senate Bills 1192 and 180.

House Bill 1677 originally amended s. 984.226, F.S., to expand the pilot program in the Seventh Judicial Circuit to be a statewide program. The strike-everything amendment provides authority for the following:

1. Expanding the pilot program approach for CINS youth statewide by contracting placement at juvenile assessment centers, juvenile crisis stabilization units, staff-secure shelters, or other appropriate facilities;
2. Clarifying and simplifying the basis upon which a court may order CINS placement;
3. Extending the length of placement for a time period not exceeding 90 days;
4. Providing for representation or competent waiver at every CINS proceeding;
5. Requiring family participation in counseling and financial contributions to the cost of placement, based on ability to pay; and
6. Requiring periodic court review of program progress and termination of placement when treatment goals are achieved.

The strike-everything amendment was favorably received by the House Committee on Juvenile Justice. At the request of the sponsor, the Committee voted to pass House Bill 1677, as amended, out of committee as a substitute bill.

AMENDMENT BY COMMITTEE ON JUDICIARY

The Committee on Judiciary adopted one amendment on April 11, 2000, that is traveling with the bill. The amendment conforms use of the term "setting" for "facility" in ss. 984.09, F.S., and 985.216, F.S.

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

J. Travis Coker

Staff Director:

Lori Ager

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Michael W. Carlson, J.D.

Staff Director:

P.K. Jameson, J.D.

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Prepared by:

Staff Director:

James P. DeBeaugrine

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