

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2336

SPONSOR: Criminal Justice Committee and Senator Webster

SUBJECT: Juveniles/Classification & Placement

DATE: April 4, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The CS addresses classification and placement of juvenile offenders, amending several sections of ch. 985, F.S. It provides a new definition relating to classification and residential placement of juvenile offenders. The CS amends substantive sections of the chapter that are relevant to classification and residential placement determinations, including statutes that affect delinquency case processing and the juvenile justice continuum.

The CS also provides for more comprehensive screening of any youth for whom a residential commitment disposition is anticipated or recommended by an officer of the court or by the DJJ. In addition to screening for the presence of medical, psychiatric, psychological, substance abuse, or educational problems, the CS also directs screening for vocational problems and for determining whether the youth poses a danger to self or others in the community.

The CS also provides statutory authority for the continuation of the Classification and Placement Workgroup to study and make recommendations to the Governor and Legislature concerning the development of a system for classifying and placing juvenile offenders who are committed to residential programs.

This CS substantially amends the following sections of the Florida Statutes: 985.03, 985.21, 985.215, 985.229, 985.23, 985.231, and 985.404.

II. Present Situation:

Classification and Placement--Chapter 985, F.S., divides responsibility for classification and placement of juvenile offenders between the courts and the Department of Juvenile Justice (DJJ). The DJJ staff, state attorneys, and defense counsel make recommendations to the court concerning a juvenile offender's risk classification at the case disposition hearing. Prior to the disposition hearing, a predisposition report is prepared and made available to the court, the state attorney, the defense counsel, the DJJ, and the youth. s. 985.229, F.S.

At the disposition hearing, the court enters a commitment order after reading the predisposition report and the recommendations of the DJJ staff, the state attorney, and the defense counsel. The commitment order specifies the risk level at which the DJJ is to place the youth. The DJJ is responsible for placing the youth in a risk level-appropriate program that will meet the youth's treatment needs. Pursuant to s. 985.231(1)(d), F.S., any commitment of a delinquent youth must be for an indeterminate period of time, not to exceed the statutory maximum for imprisonment allowed for adults who have committed the same offenses.

Section 985.03, F.S., provides definitions for the juvenile justice chapter. Section 985.03(47), F.S., defines the phrase "restrictiveness level" to mean the level of custody provided by programs that service the custody and care needs of committed youth. The subsection further defines five restrictiveness levels:

- (a) Minimum-risk nonresidential.
- (b) Low-risk residential.
- (c) Moderate-risk residential.
- (d) High-risk residential.
- (e) Juvenile correctional facilities or juvenile prison.

Respectively, these levels are often referred to as Level 2, Level 4, Level 6, Level 8, and Level 10. The levels are a continuum, with each successive level intended to indicate the increased degree of risk that the youth presents to public safety. A variety of commitment programs are operated within each level. Some programs, like boot camps and halfway houses, operate at several levels.

A review of DJJ Residential Commitment Services was conducted by the Office of Program Policy Analysis and Governmental Accountability ("OPPAGA"). In *Report No. 96-48*, issued February 10, 1997, the OPPAGA reported:

- ▶ There is very little or no difference from one restrictiveness level to the next in primary program elements, which are security, length of stay, and treatment services.
- ▶ There is considerable overlap across restrictiveness levels in criminal histories and the ages of assigned youth.
- ▶ Although program services are similar and the characteristics of youth overlap, there is much variation in the daily rates the DJJ pays program providers.

In response to this report, the DJJ noted that program elements such as length of stay and treatment services are driven by the assessed risk and service needs of individual offenders, not by commitment levels. *See Report No. 96-48, p. 8.* However, the DJJ acknowledged that physical security of facilities is a major challenge in the current commitment level system. *See id.*

In response to the OPPAGA report, the House Committee on Juvenile Justice requested that the Juvenile Justice Classification and Placement Workgroup be formed to address concerns and make recommendations. *See, e.g., Report of Recommendations of the Juvenile Commitment Classification Workgroup.* Workgroup participants identified a lack of understanding by the general public, and even among officers of the court, relative to the level of security required of

programs operating within each commitment level. *See Juvenile Justice Classification and Placement Workgroup Minutes, Jan. 21, 2000.*

Consistent with the OPPAGA report, the workgroup found that similar types of programs are offered at various commitment levels and that there is overlap in the criminal histories of youth at all levels of commitment. *See id.* The workgroup found that such inconsistencies hinder an understanding of the present commitment system. *See id.* The inconsistency among program levels relative to whether or not youth committed to the program have unsupervised access to the community was a primary security concern identified by the workgroup. *See id.* The workgroup recommended descriptive definitions of the commitment levels in order to facilitate understanding and improve placement of youth in appropriate commitment programs. *See id.*

Screening and Evaluation--Section 985.21, F.S., which relates to intake and management of delinquency cases, provides that each youth receiving a delinquency referral shall be screened for a broad array of problems and conditions that may have caused the youth to come to the attention of the DJJ or law enforcement. The consensus of the workgroup was that early comprehensive screening for and identification of problems or conditions that may have caused the youth to come to the attention of the DJJ or law enforcement is critically important to the classification and placement process, which is considered to be offender-based rather than offense-based. *See id.*

Judges, state attorneys, and public defenders who participated in the workgroup agreed that some adjudicated youth would have to be placed in detention care in order to be available for evaluation. *See id.* Section 985.215, F.S., specifies the conditions under which a youth may be held in detention care.

Section 985.229, F.S., requires that the court order a predisposition report at the disposition hearing. Section 985.23, F.S., relates to disposition hearings in delinquency cases and requires the court to allow all parties present at the hearing an opportunity to comment on the issue of disposition and any proposed rehabilitative plan. Section 985.231, F.S., relating to the court's powers of disposition in delinquency cases, provides that any commitment of a delinquent youth must be for an indeterminate period of time. The workgroup recommended amending this section for clarification purposes. *See id.*

Classification and Placement Workgroup--The workgroup reached a consensus on several commitment and placement issues. However, additional considerations were identified by the workgroup as pertinent to commitment and placement, but consensus was not reached with regard to recommendations on these issues.

III. Effect of Proposed Changes:

Placement and Classification--The CS amends s. 985.03(47), F.S., for the purpose of better differentiating residential commitment levels relative to the issue of security. The amendment is consistent with recommendations made by the Juvenile Justice Classification and Placement Workgroup.

The CS provides a definition for "residential commitment level" in subsection (47) of s. 985.03, F.S., rather than "restrictiveness level." The "residential commitment level" is defined as the "level

of security” provided by a program rather than the “level of custody.” Four levels of residential commitment are provided and minimum security measures are specified for programs operated at each level. By specifying minimum security measures for each level of residential commitment, the CS strengthens the continuum of levels. Each successive level is intended to represent the increased degree of risk that a committed youth presents to public safety. Recognizing this intent, the CS provides successive increases in the required minimum security measures at each successive level of residential commitment.

Under the CS, youth committed to the low-risk residential commitment level may have opportunities to engage in community activities away from the facility without direct staff supervision. Youth assessed at this level should represent a low risk to public safety. The DJJ may require that facilities operated at this level be staffed with 24-hour awake supervision of residents. Youths found to have committed delinquent acts involving firearms or sexual offenses, or delinquent acts that would be life felonies or first degree felonies if committed by an adult are not to be committed to a low-risk residential commitment level pursuant to the provisions of the CS.

Recognizing that youth committed to the moderate-risk residential commitment level represent a moderate risk to public safety, the CS provides that these youth may only have supervised access to the community. The CS requires minimum security measures for facilities operating within the moderate-risk level. In addition to providing 24-hour awake supervision of residents, facilities at this level must be either environmentally secure or hardware-secure with walls, fencing, or locking doors. The DJJ reports that existing programs within the moderate-risk restrictiveness level currently meet these proposed security requirements.

Recognizing that youth committed to the high-risk residential commitment level represent a high risk to public safety, the CS requires that these youth shall not have access to the community. The CS requires minimum security measures for facilities operating within the high-risk level. Such facilities must be hardware-secure with perimeter security fencing and locking doors. The DJJ reports that the majority of existing programs within the high-risk restrictiveness level meet the proposed security requirements. The DJJ notes that some facilities presently classified as high-risk may require security upgrading if they are to continue operating at this level. Alternatively, these programs could be reclassified to the moderate-risk commitment level. The additional security measures and interventions provided in this section of the CS are consistent with current DJJ policy for existing programs in the present high-risk restrictiveness level. The DJJ reports that no change in practice is anticipated for programs operating in this level.

The CS specifies that youth committed at the maximum-risk residential commitment level shall not have access to the community. Youth assessed at this level represent a significant threat to public safety. Juvenile correctional facilities and juvenile prisons are specifically included as programs that fall within the maximum-risk residential commitment level. Facilities that operate within this level are required to be hardware-secure with additional minimum security features to include perimeter security fencing and locking doors. Single-cell occupancy is required. However, youth may be housed together during pre-release transition. The DJJ reports that current juvenile correctional facilities meet the minimum security requirements provided in the CS for programs operating in the maximum-risk residential commitment level. The additional security measures and interventions provided in this section of the CS are consistent with current DJJ policy for juvenile correctional facilities. Therefore, no change in practice is anticipated.

The CS deletes references to specific programs that operate at each commitment level. At the recommendation of the workgroup, commitment programs are to be classified pursuant to the level of security provided at the facility. *See id.* Pursuant to the new definition provided for subsection (47) of s. 985.03, F.S., some programs may be reclassified at a commitment level other than the level at which they are presently specified by statute.

Following the recommendations of the workgroup, the CS deletes the minimum risk non-residential commitment restrictiveness level from subsection (47) of s. 985.03, F.S. However, the CS does not delete the programs and services that currently operate within that level. The workgroup recommended that programs and services presently operated at the minimum risk non-residential be considered as part of the probation / community control continuum of services. *See id.* With regard to security concerns, there is little difference between minimum risk non-residential programs and probation / community control services.

Under the CS, nonresidential programs and services (with the exception of aftercare) will no longer have commitment-level status. The effect of this amendment is that any transfers of youth from nonresidential placement programs to residential commitment placement programs will require court action. Presently, the DJJ transfers youth from one placement level to another through administrative action. It should be noted that some members of the workgroup contended that due process requires any affected youth to be afforded an opportunity to be heard in court before placement level transfer. *See id.*

Screening and Evaluation--At the recommendation of the workgroup, the CS amends s. 985.21(1)(a), F.S., to provide for more comprehensive screening. *See id.* In addition to screening for the presence of medical, psychiatric, psychological, substance abuse, or educational problems, the CS also directs screening for vocational problems and for determining whether the youth poses a danger to self or others in the community. The CS directs that the results of the screening shall be made available to the court and to officers of the court.

The CS amends s. 985.215(5), F.S., which specifies the conditions under which a youth may be held in detention care. It provides that a youth who was not in secure detention at the time of the adjudicatory hearing may be placed under a special detention order for a period not to exceed 72 hours, excluding weekends and legal holidays, for the purpose of conducting a comprehensive evaluation if it is anticipated that the youth may ultimately be placed in a residential commitment program. The circumstances under which a comprehensive evaluation may be ordered are specified in the CS. The CS also specifies that the court must order the least restrictive level of detention necessary to complete the comprehensive evaluation process that is consistent with public safety.

The CS, by amending s. 985.229, F.S., provides that the court may order a predisposition report, upon a finding that the youth has committed a delinquent act. The effect of this change is to ensure that the predisposition report is completed and available for consideration at the disposition hearing. The CS adds the youth and the youth's parents or legal guardian to the list of specified parties to whom the predisposition report, as well as any other report or evaluation used to prepare the predisposition report, is to be made available prior to the disposition hearing. The CS allows the court discretion to dispose of some cases without a predisposition report. This change could facilitate timely disposition of minor offenses where residential commitment is not

anticipated. The CS provides that a predisposition report must be ordered for any youth for whom a residential commitment disposition is anticipated or recommended by an officer of the court or by the DJJ.

Consistent with the recommendations of the workgroup, the CS authorizes the court to order a comprehensive evaluation for physical health, mental health, substance abuse, academic, educational, or vocational problems for any youth for whom a residential commitment disposition is anticipated or recommended by an officer of the court or by the DJJ. If a comprehensive evaluation is ordered, the CS requires that a summary of the comprehensive evaluation be included in the predisposition report. The CS specifies that the predisposition report shall be submitted to the court upon completion, but no later than 48 hours prior to the disposition hearing.

At the recommendation of the workgroup, the CS amends s. 985.23, F.S. It requires that the court's disposition determination include consideration of the DJJ's recommendations, which may include a predisposition report.

The CS amends s. 985.231, F.S., which relates to the court's powers of disposition in delinquency cases, by specifying that the duration of a youth's placement in a residential commitment program is to be determined by objective performance-based treatment planning. The length of stay in a program may be extended if a youth fails to comply with or participate in treatment activities. The length of stay may not be extended as a sanction or punishment. These amendments are consistent with current DJJ policy and should not require any change in practice for programs. The DJJ anticipates that treatment plans will be developed by treatment teams rather than individual programs. Information developed through predisposition reports and comprehensive evaluations will be available to the treatment teams for purposes of formulating treatment plans. The DJJ anticipates that performance objectives based on treatment plans will be developed by the programs.

The CS requires that the youth's treatment plan progress be reported to the court each month. Such a report is also required when release from a residential commitment program is requested. Court approval is required for any temporary release of a youth from a residential commitment program. However, youth committed to low risk residential programs are allowed to have unsupervised community access under the CS.

Classification and Placement Workgroup--The CS amends s. 985.404, F.S., which relates to the administration of the juvenile justice continuum, to provide statutory authority for the continuation of the Classification and Placement Workgroup. The CS authorizes the continued efforts of the workgroup to consider pertinent issues and make recommendations concerning the development of a system for classifying and placing juvenile offenders who are committed to residential programs in a report to the Governor and Legislature which is due no later than September 30, 2001. The workgroup will also recommend a process for testing and validating the effectiveness of the recommended classification and placement system. Membership must include, at a minimum, the following: two juvenile court judges, two state attorneys or their designated assistants, two public defenders or their designated assistants, representatives of two law enforcement agencies, and representatives of two providers of juvenile justice services.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to a review of DJJ residential commitment services conducted by the OPPAGA, the Legislature appropriates approximately \$150 million to the DJJ for residential commitment programs. *See Report No. 96-48*. The DJJ served more than 3,300 youth in 211 residential commitment programs in fiscal year 1996 - 1997. The OPPAGA reported that approximately 90 percent of the DJJ's residential programs were operated as contracted services from private providers. *See id.*

These private providers of residential commitment programs could be impacted by the CS relative to any reclassification pursuant to the provisions concerning residential commitment level definitions. The OPPAGA reported that the DJJ pays the present Level 4 programs between \$60 and \$80 per day per youth served. Present Level 6 programs receive between \$47 and \$110 per day per youth served, Level 8 programs receive between \$94 and \$176 per day per youth served, Level 10 programs receive between \$93 and \$130 per day per youth served. *See id.*

The DJJ reports that, under the CS, some residential commitment programs may have to either be reclassified at levels lower than their current classification or make security upgrades to remain at their current levels. Private providers of programs that are subject to reclassification could be impacted by the CS if reclassification affects the daily amount received from the DJJ by the providers for each youth served or causes the providers to expend funds in order to maintain their present classification level.

Currently, the DJJ contracts with private providers for program services for youth committed to the minimum-risk nonresidential level. The CS deletes minimum-risk nonresidential from the continuum of commitment levels. However, the CS does not delete the programs and

services that are currently provided at that level. The workgroup recommended that programs and services presently operated at the minimum-risk nonresidential level be considered as part of the probation / community control continuum of services since there is little, if any, difference relative to the issue of security between minimum risk non-residential programs and probation / community control services. *See Juvenile Justice Classification and Placement Workgroup Minutes, January 21, 2000.* It is not anticipated that this change will cause a direct economic impact to private providers.

Private providers of comprehensive screening and evaluation services may be positively impacted by the CS. The DJJ will have the ability to contract these services as it deems necessary to carry out the screening and evaluation processes required by the CS.

C. Government Sector Impact:

The CS amends several sections of ch. 985, F.S., which relate to the classification and placement of committed youth. However, the DJJ anticipates that the only significant fiscal consequence of the CS may be the additional expenditures for detention care associated with the provisions that authorize special detention orders where necessary to complete comprehensive evaluations of some committed youth. The DJJ reports that many of the other provisions in the CS are consistent with current DJJ policy. Those provisions are not expected to have a significant fiscal impact, nor are they expected to require a change in practice for programs.

No direct significant fiscal consequence associated with minimum-risk nonresidential program reclassification is anticipated. However, such reclassification may have an indirect fiscal impact. Under the CS, nonresidential programs and services (with the exception of aftercare) will no longer be considered to have commitment-level status. The effect of this amendment is that any transfers of youth from nonresidential placement programs to residential commitment placement programs will require court action. Presently, the DJJ transfers youth from one placement level to another through administrative action. There may be additional costs associated with transferring youth among placement levels if the process requires court action.

The DJJ reports that the majority of existing programs within the high-risk restrictiveness level meet the minimum security measures specified in the CS for facilities operating at that level. The DJJ notes that some programs presently classified at the high-risk level may require security upgrades, specifically security fencing, if they are to continue operating as high-risk residential facilities. The DJJ estimates that upgrading each affected facility would cost approximately \$41,000 per facility for the perimeter fencing alone. The DJJ reports uncertainty as to the number of facilities that would need upgrading pursuant to the CS.

Alternatively, the facilities that would no longer meet the requirements for classification as high-risk residential under the CS could be reclassified to the moderate-risk residential commitment level. Any reclassification should consider the number of program types per level relative to placement needs and public safety concerns. In its review of residential commitment services, the OPPAGA reported that the majority (59 percent) of programs and youth are concentrated at the moderate-risk commitment level. *See Report No. 96-48.*

Reclassification of the facilities that would no longer meet the requirements for classification as high-risk residential to the moderate-risk residential commitment level could increase the availability of moderate-risk placement beds and shorten the time that youth spend awaiting placement. Pursuant to the requirements of s. 985.215(10), F.S., the court must place all children who are adjudicated and awaiting placement in a residential commitment program in detention care. To the extent that program reclassification may result in youth spending less time in detention care while awaiting placement, a cost savings may be expected.

The DJJ anticipates that the direct costs of conducting the comprehensive evaluations will not result in an additional fiscal impact as the costs can be absorbed by reprogramming existing funds of more than \$4.5 million. These funds are presently appropriated to juvenile assignment centers, which have been closed.

Indirect costs associated with comprehensive evaluations are anticipated to the extent that some adjudicated youth may have to be placed in detention care to ensure that they are available for evaluation. The DJJ data for fiscal year 1997 - 1998 reveals that the cases of 54,609 youth were resolved through court proceedings. Out of this number, 21,867 youth were placed in pretrial detention care. The remaining 32,742 youth who received judicial processing were not placed in detention care. This is the group of youth who could potentially be affected by the provision of the CS that allows the court to issue a special detention order for purposes of conducting a comprehensive evaluation.

The DJJ evaluated the potential costs that might be associated with the CS's special detention order provision by starting with the assumption that eligible youth could be evaluated at the least restrictive detention status (home detention) at a cost of \$15 per day. Using fiscal year 1997 -1998 data, the DJJ projected that a maximum of 32,742 youth would be placed in home detention care at a cost of \$15 per day for a maximum of three days at a potential cost of \$1,473,390. This cost could potentially be doubled if the special detention orders were extended another 72 hours, for a cost of \$2,946,780 annually.

Several factors should be considered when evaluating the predicted fiscal impact of the special detention provision. The DJJ calculated cost using the daily rate for the least restrictive form of detention care, which is home detention care at a cost of \$15 per day. Some youth may have to be detained at more restrictive levels in order to ensure that the comprehensive evaluation is completed. The more restrictive the level of detention, the higher the daily cost for detention care. To the extent that the DJJ's calculation of the potential costs of the special detention provision fails to consider this factor, the projected fiscal impact of the CS may be low.

Other factors relied on by the DJJ to calculate the potential costs of the special detention provision could cause the projected fiscal impact to be skewed artificially high. The DJJ projected costs relying on a maximum number of potentially eligible youth being detained for a maximum period of time. Some comprehensive evaluations of detained youth may be completed in less than 72 hours, resulting in a cost savings over the DJJ's projected fiscal impact. Similarly, some evaluations may be completed without necessity of any detention care placement. The DJJ calculated costs on the assumption that all youth who received judicial processing, but were not placed in detention care, could be affected by the CS. However,

only those youth who received judicial processing and were not held in pretrial detention care are in the universe of youth who are potentially subject to a special detention order. The DJJ data does not reveal how many youth in this universe also fall within the group of youth who are likely to be placed in a residential program. This would be the only group actually affected by the CS. The DJJ did not have any data readily available to indicate how many youth who were not initially held in secure pretrial detention are subsequently placed in a residential commitment facility.

The risk factors that determine the appropriateness of pretrial secure detention are often the same factors that affect residential commitment placement decisions. One would expect that many youth who are held in pretrial secure detention are ultimately committed to residential programs. Therefore, the number of youth who were not held in secure pretrial detention but who are likely to be placed in a residential commitment facility probably represent a small group from the universe of youth who were not held in secure pretrial detention.

The CS only allows the court to order a comprehensive evaluation for this small group of youth who were not held in secure pretrial detention, but who are likely to be placed in a residential commitment facility. The number of youth who are actually ordered to participate in a comprehensive evaluation is likely to be only a subgroup of those who are potentially subject to such an order. Of the subgroup who are actually ordered to participate in a comprehensive evaluation, only a fraction of those would likely require detention placement to complete the evaluation. It is with regard to this last fraction of youth that any fiscal impact may result. To the extent that the DJJ cost calculation fails to consider this issue, the projected fiscal impact of the CS may be high.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.