

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Judiciary Committee

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BILL: CS/SB 1044

SPONSOR: Judiciary Committee and Senator Crist

SUBJECT: Juvenile Process & Service

DATE: April 28, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute provides for a statutory right to speedy trial without demand in a juvenile delinquency case.

This committee substitute provides that when a delinquency petition is filed, the court must hold an adjudicatory hearing without demand within 90 days from the earlier of the date that the child is taken into custody, or from the date the summons is served, in accordance with the Florida Rules of Juvenile Procedure.

Rule 8.090 of the Florida Rules of Juvenile Procedure, which provides for a speedy trial without demand for a juvenile, is repealed to the extent that it is inconsistent with this committee substitute, provided that this committee substitute is approved by a two-thirds vote of both the House of Representatives and the Senate.

This committee substitute substantially amends section 985.228, Florida Statutes.

## II. Present Situation:

### Service of Process in Juvenile Delinquency Cases

The clerk is required to issue a summons upon the filing of a petition which contains allegations that, if true, establish that the child committed a delinquent act or law violation and upon petitioner request.<sup>1</sup> If a petition alleges that the child has committed an act of delinquency or a law violation, the court may order the child to be immediately taken into custody.<sup>2</sup> If a child is

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<sup>1</sup> s. 985.219(2), F.S.

<sup>2</sup> s. 985.219(6), F.S.

not ordered detained, the summons requires the child's custodian to bring the child at a specified time and place.<sup>3</sup> Court jurisdiction attaches to the child and the case when the summons is served upon the child and a parent, custodian, or guardian of the child, or when the child is taken into custody regardless of whether the child has been served or the petition filed.<sup>4</sup>

### **Statutory Rights in Delinquency Proceedings**

In a delinquency proceeding, a child has a right to be represented by counsel.<sup>5</sup> If the child and parents or guardian are indigent, the court is required to appoint counsel.<sup>6</sup> The right to counsel attaches to every stage of the proceeding, unless the child freely, knowingly, and intelligently waives the right.<sup>7</sup>

When subjected to juvenile sanctions only, a child does not have the right to a jury trial.<sup>8</sup>

The child is entitled to the opportunity to introduce evidence, testify, and cross-examine witnesses.<sup>9</sup>

Additionally, a child cannot be compelled to testify against himself or herself.<sup>10</sup>

A child may only be held in detention for up to 21 days, unless an adjudicatory hearing has been commenced in good faith by the court.<sup>11</sup> Detention may also be extended for 9 more days upon a showing of good cause in cases that, if charged in adult court, constitute a life felony, a felony of the first degree, or a felony of the second degree.<sup>12</sup>

The statutes do not recognize an explicit right to speedy trial, and only provide:

(1) The adjudicatory hearing must be held as soon as practicable after the petition alleging that a child has committed a delinquent act or violation of law is filed and in accordance with the Florida Rules of Juvenile Procedure; but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted.<sup>13</sup>

### **Florida Rules of Juvenile Procedure**

Rule 8.090 provides that if a delinquency petition has been filed, the court must hold an adjudicatory hearing without demand within 90 days of the earlier of the date the child was taken into custody, or the date the petition was filed.<sup>14</sup> If an adjudicatory hearing is not commenced

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<sup>3</sup> s. 985.219(3), F.S.

<sup>4</sup> s. 985.219(8), F.S.

<sup>5</sup> s. 985.203(1), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> s. 985.228(2), F.S.

<sup>9</sup> s. 985.228(2)(b), F.S.

<sup>10</sup> s. 985.228(2)(c), F.S.

<sup>11</sup> s. 985.215(5)(c), F.S.

<sup>12</sup> s. 985.215(5)(g), F.S.

<sup>13</sup> s. 985.228(1), F.S.

<sup>14</sup> F.R.J.P. 8.090(a).

within 90 days, a motion to dismiss may be filed, and the case is subject to dismissal, provided that the following do not apply:

- The child has voluntarily waived the right to speedy trial;
- An extension of time has been ordered, upon request or stipulation of the child or in exceptional circumstances, or where the mental competency of the child is at issue, for appeals by the state, or for hearings on other pending charges;
- A failure to hold the hearing is attributable to the child or the child's counsel, or a co-respondent in the same hearing; or
- The child was unavailable for hearing.<sup>15</sup>

Court rule also provides for a speedy trial upon demand, requiring a hearing to be held within 60 days.<sup>16</sup> If an adjudicatory hearing has not commenced within 50 days after demand, the child may file a motion to dismiss.<sup>17</sup>

### **III. Effect of Proposed Changes:**

When a delinquency petition is filed, this committee substitute provides for an adjudicatory hearing without demand within 90 days from the earlier of the date that the child was taken into custody, or the date of service of the issued summons, in accordance with the Florida Rules of Juvenile Procedure.

This committee substitute provides for the repeal, upon a two-thirds approval vote of both the House of Representatives and the Senate, of Rule 8.090 of the Florida Rules of Juvenile Procedure, where it is inconsistent with these provisions. If approved, this repeal will have the effect of deleting rule language that partially based the start of the 90 days from the date that the petition was filed.

This committee substitute takes effect July 1, 2005.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>15</sup> F.R.J.P. 8.090(b), (d), and (m).

<sup>16</sup> F.R.J.P. 8.090(g).

<sup>17</sup> F.R.J.P. 8.090(i).

**D. Other Constitutional Issues:**

Article V, Section 2(a) of the State Constitution provides:

Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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