

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 235

Juvenile Process and Service

SPONSOR(S): Porth and others

TIED BILLS:

IDEN./SIM. BILLS: SB 1044, by Crist

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Juvenile Justice Committee		White	White
2) Justice Appropriations Committee			
3) Justice Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

Currently, there appears to be a discrepancy between the Florida Statutes and the Florida Rules of Juvenile Procedure as to:

- When the jurisdiction of the court over a particular juvenile is attained; and
- When a juvenile's right to a speedy trial without demand attaches.

Section 985.219(8), F.S., states that the jurisdiction of the court attaches to the child and the case when the first of the two following events occurs: (1) when the **summons is served** (a summons is issued by the Clerk of Court when a petition is filed) on the child and a parent or legal guardian; or (2) when the child is taken into custody. In contrast, Florida Rule of Juvenile Procedure 8.090(a) provides that a child shall be brought to an adjudicatory hearing within 90 days of the earlier of either: (1) the date the **petition was filed**; or (2) the date the child was taken into custody.

Under these provisions, a petition may be filed; thereby, starting the 90-day speedy trial period under the rule. A law enforcement officer, however, may not be able to serve the summons issued pursuant to the filing of the petition because he or she is unable to locate the child, e.g., the juvenile has moved, has provided incorrect address information, or is evading law enforcement. Once the speedy trial period has expired, the juvenile is permitted to move for discharge of his or her case and during the hearing on that motion, the state must show that it made diligent efforts to serve the summons. If the court finds that such efforts have not been made, an adjudicatory hearing must be held within 10 days of the denial of the motion for discharge or the juvenile will be forever discharged from the crime.

HB 235 amends the statutes to provide that the 90-day speedy trial period begins on the date that the child is taken into custody or the summons issued upon the filing of a petition is served. In doing so, the bill may avoid time and fiscal expenditures associated with the court's conduct of a motion to discharge hearing to determine the reasons for any inability or failure to serve the summons within the 90-day speedy trial time period.

As the bill's amendments appear to conflict with Florida Rule of Juvenile Procedure 8.090(a), the Legislature may wish to consider repealing the rule. Such repeal requires that the act be passed by a two-thirds affirmative vote of the membership of each house.

Fiscal impact is indeterminate.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 1/27/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill may avoid time and fiscal expenditures currently associated with the court's conduct of juvenile motion to discharge hearings to determine the reasons for any inability or failure to serve the summons within the 90-day speedy trial time period.

B. EFFECT OF PROPOSED CHANGES:

Section 985.218, F.S., requires the state, when seeking a finding that a child has committed a delinquent act or violation of law, to initiate these proceedings with a petition filed by the state attorney. Upon **the filing of a petition**: (1) the 90-day speedy trial period begins to run pursuant to Florida Rule of Juvenile Procedure 8.090; and (2) the Clerk or Deputy Clerk of Court is required to issue a summons for the juvenile and his parent or legal guardian to appear at a hearing pursuant to s. 985.219(2) and (3), F.S. Under s. 985.219(8), F.S., however, the court's jurisdiction does not attach to the juvenile and the case until: (1) **the summons is served** upon the child and parent or legal guardian, even though the filing of the petition has started the 90-day speedy trial period running; or (2) the child is taken into custody.

The speedy trial court rule, Florida Rule of Juvenile Procedure 8.090(d) and (m), provides that a juvenile may move for discharge of his or her case if an adjudicatory hearing is not commenced within 90 days of the date upon which the petition was filed or upon which the juvenile was taken into custody. The rule further requires the court, upon the filing of such motion, to hold a hearing and to determine whether the failure to hold the adjudicatory hearing is attributable to one or more of the following factors: (1) the juvenile has voluntarily waived the right to speedy trial; (2) an extension of time has been agreed to by the parties or ordered by the court; (3) the juvenile, a co-respondent in the same adjudicatory hearing, or their counsel is responsible for the delay; (4) the juvenile was unavailable; or (5) the demand for speedy trial is invalid. If the court finds that none of these factors exist, the court must order that the juvenile be brought to an adjudicatory hearing within 10 days. If that adjudicatory hearing is not conducted within 10 days, the juvenile is forever discharged from the crime.¹ Alternatively, if after reviewing the case to determine whether any of the enumerated factors exist, the court finds that dismissal is inappropriate, the court is required to deny the motion to dismiss and a new 90-day period for an adjudicatory hearing commences from the date of the denial.²

In some cases where the location of the child and his or her parent or legal guardian cannot be determined, e.g., such persons have moved, have provided inaccurate address information, or are evading law enforcement, the 90-day speedy trial period may expire prior to an officer being able to serve the summons or take the child into custody. Once the period has expired, the juvenile, per the speedy trial court rule, may bring a motion to discharge the case; however, the court does not, under s. 985.219, F.S., appear to have jurisdiction over the case and the ability to rule upon the motion until the juvenile and his or her parent or legal guardian personally appear in court;³ the summons is served; or the juvenile is taken into custody.

If the court acquires jurisdiction after the expiration of the 90-day speedy trial period and the filing of a motion to discharge, the court must hold a hearing. If, during such motion hearing, the court finds that the state made diligent efforts to serve the summons, but was unsuccessful because of reasons attributable to the juvenile, the court may deny the motion. Neither statute nor case law defines what

¹ Florida Rule of Juvenile Procedure 8.090(m).

² Florida Rule of Juvenile Procedure 8.090(d)(6).

³ Section 985.219(1), F.S. (stating that the personal appearance of any person in a hearing before the court obviates the necessity of serving process on that person).

facts constitute diligent efforts by the state or reasons attributable to the juvenile; instead, the courts resolve these issues on a case-by-case basis. For example, a Florida appellate court found that the state failed to make diligent efforts where its attempt to serve the summons failed due to incorrect address information provided by the juvenile, but where the state could have obtained the correct address by calling the Department of Health and Rehabilitative Services. *M.A. v. State*, 483 So.2d 511 (Fla. 4th DCA 1986); *See also R.K. v. State*, 778 So.2d 1098 (Fla. 4th DCA 2001); and *J.W. v. State*, 843 So.2d 938 (Fla. 4th DCA 2003) (holding that three unsuccessful attempts by the state to serve a summons at the juvenile's residence during school hours does not constitute diligent efforts to serve the summons).

Unlike Florida Rule of Juvenile Procedure 8.090, Florida Rule of Criminal Procedure 3.191, which applies to adults, provides that the speedy trial time period begins to run when a notice to appear (referred to as a summons in the juvenile context) is served upon the adult or the adult is arrested. As such, the court's jurisdiction and the attachment of the defendant's right to speedy trial occur at the same time; thereby avoiding necessity for a hearing to determine the reasons for any inability or failure to serve the notice to appear.

HB 235 amends s. 985.219, F.S., to add a new subsection providing that the 90-day speedy trial time period begins when the child is taken into custody or when the summons issued upon the filing of a petition is served. Accordingly, the bill would have the effect of making the attachment of the court's jurisdiction consistent with the commencement of the 90-day speedy trial period and, in turn, may avoid time and fiscal expenditures associated with the court's conduct of a hearing to determine the reasons for any inability or failure to serve the summons within the 90-day speedy trial time period.

The Department of Juvenile Justice (DJJ or department) estimates that 90 percent of adjudicatory hearings are already held within 90 days of the date the petition is filed. According to the department, the most common causes of delays include the following:

- Incomplete discovery;
- Juvenile not appearing at arraignment;
- Additional testing or evaluation of youth needed;
- Lack of availability of a key witness;
- Juvenile moved prior to summons being issued;
- Parent or guardian refused to bring juvenile to court;
- Incorrect address or no one home when summons being served;
- Lab results not received;
- Conflicting schedules of attorneys;
- Competency issues; or
- Cases in which additional charges are pending.

C. SECTION DIRECTORY:

Section 1. Amends s. 985.219, F.S.; creates a new subsection requiring a child to be brought to an adjudicatory hearing without demand within 90 days after the earlier of the date the child was taken into custody or the date of service of the summons issued upon the filing of a petition; and renumbers subsequent sections.

Section 2. Amends s. 985.201, F.S.; conforms cross-reference.

Section 3. Amends s. 985.219, F.S.; conforms cross-reference.

Section 4. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None apparent.

2. Expenditures:

See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None apparent.

2. Expenditures:

None apparent.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None apparent.

D. FISCAL COMMENTS:

Representatives of the Department of Juvenile Justice have indicated that they anticipate an insignificant fiscal impact to the DJJ.⁴

The Office of State Courts Administrator (OSCA) indicated in its fiscal analysis⁵ that the bill's enactment may generate legal challenges to the amended statutes that could increase the workload of, and costs incurred by, the courts and public defender and state attorney offices. The OSCA states that the fiscal impact is "difficult to estimate because it is not possible to determine how many hearings or appeals would be involved."

The bill may also result in an indeterminate reduction in the workload of, and costs incurred by, the courts and public defender and state attorney offices to the extent that the bill reduces that number of hearings on juvenile speedy trial motions to discharge where the state has not yet served the summons.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Article V, Section 2(a), Florida Constitution, provides that the Florida Supreme Court is vested with the exclusive power to promulgate rules for the practice and procedure in state courts. However,

⁴ Bill Analysis for HB 235 by the Department of Juvenile Justice, January 11, 2005.

⁵ Fiscal Analysis for HB 235 by the Office of State Courts Administrator, January 28, 2005.

Article V, Section 2(a), Florida Constitution, also provides that the Legislature may repeal a court rule with a two-thirds affirmative vote of the membership of each house.

The substance of the bill's amendment of s. 985.219, F.S., appears to be inconsistent with Florida Rule of Juvenile Procedure 8.090(a); therefore, the Legislature may wish to consider amending the bill to repeal Florida Rule of Juvenile Procedure 8.090(a), and to provide that the repeal only takes effect if the act is passed by a two-thirds affirmative vote of the membership of each house.

The Legislature's constitutional power to repeal a court rule does not include the power to amend a court rule or to enact any law relating to court practice or procedure.⁶ Consequently, if the substance of this bill were found to relate to court practice or procedure, it would be unconstitutional.

The bill does not appear to relate to court practice and procedure, as it merely aligns the commencement of the juvenile speedy trial period with the commencement of the court's jurisdiction in a juvenile delinquency case, a substantive matter which is exclusively within the province of the Legislature's decision-making.^{7 8} See Article I, s. 15(b) and Article 5, s. 5 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill's amendment to s. 985.219, F.S., which provides that a juvenile adjudicatory hearing without demand shall be brought within 90 days after the earlier of the date the child is taken into custody or the date that the summons is served, may be construed as conflicting with s. 985.228(1), F.S., which states that, ". . . the adjudicatory hearing must be held as soon as practicable . . .," after the filing of the petition. To avoid such conflict, the Legislature may wish to consider amending the bill to provide that a juvenile adjudicatory hearing without demand shall be held as soon as practicable within 90 days after the earlier of the date the child is taken into custody or the date that the summons is served.

Additionally, the Legislature may wish to consider amending the bill so that its substance is placed in s. 985.228, F.S., which relates to when juvenile adjudicatory hearings should be held and which appears to be more topically related to the bill's substance than s. 985.219, F.S., which relates to juvenile process and service.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁶ *In re Clarification of Florida Rules of Practice and Procedure*, 281 So.2d 204 (Fla. 1973).

⁷ Section 985.219(8), F.S., requires the summons issued pursuant to the filing of a petition to be served upon both the juvenile and his or her parent or legal guardian prior to court acquiring jurisdiction over the child and the case. It has been held that due process requires that a minor be served with process in a proceeding that may result in his committal to an institution as a delinquent child. *See Sharp v. State*, 127 So.2d 865 (Miss. 1961).

⁸ In *RJA v. Foster*, 603 So.2d 1167 (Fla. 1992), the Florida Supreme Court held that its rule providing for a 90-day speedy trial period and 10-day recapture period was procedural and, thus, took precedence over statute providing only for a 90-day speedy trial period. This case does not appear to be relevant to the bill, as its statutory amendments relate to substantive matters constitutionally required to be determined by the Legislature, i.e., the commencement of the court's jurisdiction and, in turn, the related speedy trial period in juvenile delinquency cases, rather than the number of days that the speedy trial period lasts.