

Bill No. HB 335, 1st Eng.

Barcode 861676

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Wise moved the following amendment:

**Senate Amendment (with title amendment)**

On line 797, delete that line

and insert:

Section 11. Subsections (1) and (2) of section 27.51, Florida Statutes, are amended to read:

27.51 Duties of public defender.--

(1) The public defender shall represent, without additional compensation, any person determined to be indigent under s. 27.52 and:

- (a) Under arrest for, or charged with, a felony;
- (b) Under arrest for, or charged with:

1. A misdemeanor authorized for prosecution by the state attorney;

2. A violation of chapter 316 punishable by imprisonment;

3. Criminal contempt; or

4. A violation of a special law or county or municipal ordinance ancillary to a state charge, or if not ancillary to

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1 a state charge, only if the public defender contracts with the  
2 county or municipality to provide representation pursuant to  
3 ss. 27.54 and 125.69.

4  
5 The public defender may ~~shall~~ not provide representation under  
6 ~~pursuant to~~ this paragraph if the court, before ~~prior to~~  
7 trial, files in the cause an order of no imprisonment as  
8 provided in s. 27.512;

9 (c) Who is a child taken into custody under s. 985.207  
10 or s. 985.2075 ~~Alleged to be a delinquent child pursuant to a~~  
11 ~~petition filed before a circuit court;~~

12 (d) Sought by petition filed in such court to be  
13 involuntarily placed as a mentally ill person under part I of  
14 chapter 394, involuntarily committed as a sexually violent  
15 predator under part V of chapter 394, or involuntarily  
16 admitted to residential services as a person with  
17 developmental disabilities under chapter 393. A public  
18 defender may ~~shall~~ not represent any plaintiff in a civil  
19 action brought under the Florida Rules of Civil Procedure, the  
20 Federal Rules of Civil Procedure, or the federal statutes, or  
21 represent a petitioner in a rule challenge under chapter 120,  
22 unless specifically authorized by statute;

23 (e) Convicted and sentenced to death, for purposes of  
24 handling an appeal to the Supreme Court; or

25 (f) Is appealing a matter in a case arising under  
26 paragraphs (a)-(d).

27 (2) Except as provided in s. 985.203, the court may  
28 not appoint the public defender to represent, even on a  
29 temporary basis, any person who is not indigent. The court,  
30 however, may appoint private counsel in capital cases as  
31 provided in ss. 27.40 and 27.5303.

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1 Section 12. Subsections (1) and (2) of section  
2 985.203, Florida Statutes, are amended to read:

3 985.203 Right to counsel.--

4 (1) A child shall be represented ~~is entitled to~~  
5 ~~representation by legal~~ counsel at all stages of any  
6 delinquency court proceedings occurring after the child has  
7 been taken into custody under s. 985.207 or s. 985.2075,  
8 unless the right to counsel is freely, knowingly, and  
9 intelligently waived by the child after he or she has been  
10 advised by counsel ~~under this part.~~ If the child and the  
11 parents or other legal guardian are indigent and unable to  
12 employ counsel for the child, the court shall appoint counsel  
13 pursuant to s. 27.52. Determination of indigence and costs of  
14 representation shall be as provided by ss. 27.52 and 938.29.  
15 ~~Legal Counsel representing a child who exercises the right to~~  
16 ~~counsel~~ shall be allowed to provide advice ~~and counsel~~ to the  
17 child at any time after the child has been taken into custody  
18 under s. 985.207 or s. 985.2075 ~~subsequent to the child's~~  
19 ~~arrest, including prior to a detention hearing while in secure~~  
20 ~~detention care. A child shall be represented by legal counsel~~  
21 ~~at all stages of all court proceedings unless the right to~~  
22 ~~counsel is freely, knowingly, and intelligently waived by the~~  
23 ~~child.~~ If the child appears without counsel, the court shall  
24 advise the child of his or her rights with respect to  
25 representation of court-appointed counsel.

26 (2) If the parents or legal guardian of an indigent  
27 child are not indigent but refuse to employ counsel, the court  
28 shall appoint counsel pursuant to s. 27.52 to represent the  
29 child at the detention hearing and until counsel is provided.  
30 Costs of representation shall be ~~are hereby~~ imposed as  
31 provided by ss. 27.52 and 938.29. Thereafter, the court may

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1 ~~shall~~ not appoint counsel for an indigent child who has ~~with~~  
2 nonindigent parents or a nonindigent legal guardian but shall  
3 order the parents or legal guardian to obtain private counsel.  
4 A parent or legal guardian of an indigent child who has been  
5 ordered to obtain private counsel for the child and who  
6 willfully fails to follow the court order shall be punished by  
7 the court in civil contempt proceedings. If a parent or legal  
8 guardian is also an alleged victim in the case, the court may  
9 not order the parents or legal guardian to obtain private  
10 counsel but shall appoint counsel pursuant to s. 27.52 to  
11 represent the indigent child. At the disposition of the case  
12 and upon a finding by the court that a parent or legal  
13 guardian is a victim of the offense, the parents or legal  
14 guardian shall not be liable for fees, charges, or costs under  
15 s. 27.52, s. 938.29, or this chapter.

Section 13. This act shall take effect July 1, 2006.

----- T I T L E   A M E N D M E N T -----

And the title is amended as follows:

On line 74, after the semicolon,

insert:

amending s. 27.51, F.S.; requiring that the  
public defender represent an indigent child  
taken into custody under specified delinquency  
provisions; amending s. 985.203, F.S.;  
requiring that a child be represented at a  
specified point in delinquency court  
proceedings unless the right to counsel is  
waived after receiving advice of counsel;

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1 providing that counsel be permitted to advise a  
2 child after a specified point in delinquency  
3 court proceedings; requiring that the court  
4 appoint counsel for an indigent child if the  
5 child's parent or legal guardian is the alleged  
6 victim in the case; providing that the parents  
7 or legal guardian is not liable for fees,  
8 charges, or costs upon a finding by the court  
9 that a parent or legal guardian is a victim of  
10 the offense;

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