

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.)

Prepared By: Criminal Justice Committee

BILL: SB 526

INTRODUCER: Senator Wise

SUBJECT: Juvenile Defendants/Public Defender

DATE: January 6, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill would expand the authority of the public defender from representing an indigent youth “alleged to be a delinquent child pursuant to a petition filed before a circuit court” to an indigent youth who is “taken into custody for a felony, a misdemeanor, or criminal contempt, or who is facing delinquency proceedings under chapter 985, F.S.” According to the Florida Public Defender Association, it is common practice in many circuits for public defenders to be appointed to represent indigent youth at detention hearings or other times prior to a petition being filed.

In addition, the bill would provide that a youth may only waive the right to counsel after he or she has been given a meaningful opportunity to confer with counsel.

This bill amends sections 27.51 and 985.203, Florida Statutes.

II. Present Situation:

Under s. 27.51(1)(c), F.S., the public defender is required to represent an indigent youth who is alleged to be a delinquent child pursuant to a petition filed before a circuit court. When the public defender is appointed to represent a minor or an adult tax-dependent person in any proceeding in circuit court or in a criminal proceeding in any other court, the parents or legal guardian are liable for fees and costs. s. 27.52, F.S.

Section 985.203, F.S., provides that a youth shall be represented by legal counsel at all stages of court proceedings unless the right to counsel has been freely, knowingly, and intelligently waived by the child. Legal counsel representing a child who exercises the right to counsel must be allowed to provide advice and counsel to the child at any time after the child’s arrest. If the

child appears without counsel, the court must advise the child of his or her rights with respect to representation of court-appointed counsel.

III. Effect of Proposed Changes:

The bill would expand the authority of the public defender from representing an indigent youth “alleged to be a delinquent child pursuant to a petition filed before a circuit court” to an indigent youth who is “taken into custody for a felony, a misdemeanor, or criminal contempt, or who is facing delinquency proceedings under chapter 985, F.S.” According to the Florida Public Defender Association, it is common practice in many circuits for public defenders to be appointed to represent indigent youth at detention hearings or other times prior to a petition being filed.

The bill would also make it clear that if a child has legal representation, he or she does not have to exercise the right to counsel, and may get advice and counsel at any time after being taken into custody. In addition, the bill would provide that a youth may waive the right to counsel only after he or she has been given a meaningful opportunity to confer with counsel.

The bill would also provide that if the court makes a finding that the parent or legal guardian is a victim of the offense, they will not be held liable for paying court fees and costs.

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:

None.

C. Government Sector Impact:

According to the Florida Public Defender Association, the fiscal impact of the bill on the public defenders advising a child of his or her legal rights before being permitted to

waive the right to counsel is minimal. However, the fiscal impact that cannot be determined by the association is if a public defender is appointed to represent a child in a case because the child chooses not to waive his or her right to counsel. Some circuits would be greatly impacted and others would not. According to the association, in large circuits like the Fourth (Jacksonville), the Eleventh (Miami), the Thirteenth (Tampa), and the Seventeenth (Broward), there would be no impact because the common practice there is to appoint a public defender to almost all indigent children. Other circuits that do not do this as a matter of course could have a significant increase in caseloads. However, this potential fiscal impact should be balanced against the likelihood that reversals on appeal in which a child has not received legal counsel may decrease if the bill is passed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In January, 2005, the Supreme Court of Florida considered the biennial report of the Juvenile Rules Committee, and elected not to adopt a rule change on the subject of this bill at that time. The Court observed that there was a potential financial impact with regard to requiring that juveniles consult with a lawyer prior to waiving the right to counsel, and suggested the Legislature consider the statutory revisions found in the bill, rather than the Court simply adopting the rule advocated by the Juvenile Rules Committee. The Court has not rejected the proposed Rule change, but rather deferred its consideration until after the Legislature has an opportunity to act. The Court reinforced that judges on the Delinquency bench must ensure that a waiver of counsel by a child is knowing and voluntary, especially before a guilty or nolo contendere plea is entered. *Amendments to the Florida Rules of Juvenile Procedure*, 894 So.2d 875, (Fla. 2005).

VIII. Summary of Amendments:

None.

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