

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: Judiciary Committee

BILL: CS/SB 526

INTRODUCER: Judiciary Committee and Senator Wise

SUBJECT: Juvenile Defendants/Public Defender

DATE: February 10, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Luczynski</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill would change the timing when the public defender is required, under s. 27.51(1), F.S., to represent an indigent child from at the time when such a child is “alleged to be a delinquent child pursuant to a petition filed before a circuit court” to when such a child is “taken into custody under s. 985.207 or s. 985.2075.” 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 clarifies the timing when a child’s right to counsel attaches. The bill adds to the current waiver of counsel provision providing that a child must be advised by counsel prior to waiving his or her right to counsel. As noted by the Florida Supreme Court, this is an important safeguard to protect a juvenile’s constitutional right to counsel, and it is consistent with the recommendations of the Florida Bar Commission on the Legal Needs of Children in its June 2002 Final Report.¹ Moreover, this is already occurring in some counties. “[P]ublic defenders in some counties [already have] adopt[ed] an informal agreement with trial courts in their jurisdictions by which the public defenders consult with juvenile defendants to ensure that each juvenile’s waiver is knowing and voluntary.”² The bill further clarifies that counsel shall be allowed to provide advice to the child at anytime after he or she has been taken into custody under s. 985.207 or s. 985.2075, F.S.

Finally, the bill requires the court to appoint counsel for an indigent child if the child’s parent or legal guardian is also the alleged victim in the case. It provides that the parents or legal guardian

¹ *Amendments to the Florida Rules of Juvenile Procedure*, 894 So. 2d 875, 880 (Fla. 2005).

² *Id.*

is not liable for fees, charges, or costs if the court finds that a parent or the legal guardian is a victim of the offense.

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 nonindigent parents or legal guardian are liable for fees and costs. s. 27.52(6), F.S.

Section 985.203(1), F.S., provides that a youth shall be represented by legal counsel at all stages of any proceeding under the Delinquency Case Processing part of ch. 985, F.S., 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 change the timing when the public defender is required to represent an indigent child from at the time when such a child is "alleged to be a delinquent child pursuant to a petition filed before a circuit court" to when such a child is "taken into custody under s. 985.207 or s. 985.2075." This change would require the public defender to represent an indigent child at the time that he or she has been taken into custody. Sections 985.207 and 985.2075, F.S., delineate the circumstances when a child may be picked up and brought into custody. The bill would have the effect of requiring the public defender to represent a child at somewhat equivalent points in a delinquency context as the public defender is required to represent any person in a criminal context under s. 27.51, F.S. Moreover, according to the Department of Juvenile Justice, this proposed change would make the statute consistent with what already realistically occurs.³

The bill would make the provision in s. 985.203(1), F.S., specifying the time that the right to counsel attaches in a delinquency proceeding consistent with the proposed modifications to s. 27.51(1), F.S. concerning the point in a delinquency proceeding when the public defender is required to represent an indigent child. The bill would also provide that a child may only waive the right to counsel after the child has been advised by counsel. This is consistent with the Supreme Court of Florida in *Amendments to the Florida Rule of Juvenile Procedure*, where it stated that "consultation with an attorney prior to waiving counsel is an important additional safeguard designed to protect a juvenile's constitutional right to counsel."⁴ The bill clarifies that counsel shall be allowed to provide advice to the child at anytime after he or she has been taken into custody under s. 985.207 or s. 985.2075, F.S.

³ Department of Juvenile Justice, 2006 Legislative Session, Bill Analysis: Relating to Juvenile Defendants/Public Defender, SB 526 (2006).

⁴ *Amendments to the Florida Rules of Juvenile Procedure*, 894 So. 2d at 880.

The bill also requires the court to appoint counsel for an indigent child if the child's parent or legal guardian is also the alleged victim in the case. It provides that if the court makes a finding that the parent or legal guardian is a victim of the offense, he or she 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 affected 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 Florida Bar's Juvenile Court Rules Committee (Rules Committee), and elected not to adopt a rule change at that time on the part of this bill regarding a child's consultation with an attorney prior to his or her waiver of the right to counsel. 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 that the Legislature consider implementing statutory revisions regarding this waiver requirement, rather than the Court simply adopting the rule advocated by the 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.⁵

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

⁵ *Id.* at 881.

VIII. Summary of Amendments:

None.

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