## Florida Senate - 2006

CS for SB 526

By the Committee on Judiciary; and Senator Wise

590-1728-06

1	A bill to be entitled
2	An act relating to juvenile defendants;
3	amending s. 27.51, F.S.; requiring that the
4	public defender represent an indigent child
5	taken into custody under specified delinquency
6	provisions; amending s. 985.203, F.S.;
7	requiring that a child be represented at a
8	specified point in delinquency court
9	proceedings unless the right to counsel is
10	waived after receiving advice of counsel;
11	providing that counsel be permitted to advise a
12	child after a specified point in delinquency
13	court proceedings; requiring that the court
14	appoint counsel for an indigent child if the
15	child's parent or legal guardian is the alleged
16	victim in the case; providing that the parents
17	or legal guardian is not liable for fees,
18	charges, or costs upon a finding by the court
19	that a parent or legal guardian is a victim of
20	the offense; providing an effective date.
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22	Be It Enacted by the Legislature of the State of Florida:
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24	Section 1. Subsections (1) and (2) of section 27.51,
25	Florida Statutes, are amended to read:
26	27.51 Duties of public defender
27	(1) The public defender shall represent, without
28	additional compensation, any person determined to be indigent
29	under s. 27.52 and:
30	(a) Under arrest for, or charged with, a felony;
31	(b) Under arrest for, or charged with:
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1 1. A misdemeanor authorized for prosecution by the 2 state attorney; 3 2. A violation of chapter 316 punishable by 4 imprisonment; 5 3. Criminal contempt; or 6 4. A violation of a special law or county or municipal 7 ordinance ancillary to a state charge, or if not ancillary to a state charge, only if the public defender contracts with the 8 county or municipality to provide representation pursuant to 9 ss. 27.54 and 125.69. 10 11 12 The public defender may shall not provide representation under 13 pursuant to this paragraph if the court, before prior to trial, files in the cause an order of no imprisonment as 14 provided in s. 27.512; 15 (c) Who is a child taken into custody under s. 985.207 16 17 or s. 985.2075 Alleged to be a delinquent child pursuant to a 18 petition filed before a circuit court; (d) Sought by petition filed in such court to be 19 involuntarily placed as a mentally ill person under part I of 20 21 chapter 394, involuntarily committed as a sexually violent 22 predator under part V of chapter 394, or involuntarily 23 admitted to residential services as a person with developmental disabilities under chapter 393. A public 2.4 defender may shall not represent any plaintiff in a civil 25 26 action brought under the Florida Rules of Civil Procedure, the 27 Federal Rules of Civil Procedure, or the federal statutes, or 2.8 represent a petitioner in a rule challenge under chapter 120, 29 unless specifically authorized by statute; (e) Convicted and sentenced to death, for purposes of 30 handling an appeal to the Supreme Court; or 31

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1 (f) Is appealing a matter in a case arising under 2 paragraphs (a)-(d). 3 (2) Except as provided in s. 985.203, the court may 4 not appoint the public defender to represent, even on a 5 temporary basis, any person who is not indigent. The court, 6 however, may appoint private counsel in capital cases as 7 provided in ss. 27.40 and 27.5303. Section 2. Subsections (1) and (2) of section 985.203, 8 Florida Statutes, are amended to read: 9 10 985.203 Right to counsel. --(1) A child shall be represented is entitled to 11 12 representation by legal counsel at all stages of any 13 delinquency court proceedings occurring after the child has been taken into custody under s. 985.207 or s. 985.2075, 14 unless the right to counsel is freely, knowingly, and 15 intelligently waived by the child after he or she has been 16 17 advised by counsel under this part. If the child and the parents or other legal guardian are indigent and unable to 18 employ counsel for the child, the court shall appoint counsel 19 pursuant to s. 27.52. Determination of indigence and costs of 20 21 representation shall be as provided by ss. 27.52 and 938.29. 22 Legal Counsel representing a child who exercises the right to 23 counsel shall be allowed to provide advice and counsel to the child at any time after the child has been taken into custody 2.4 under s. 985.207 or s. 985.2075 subsequent to the child's 25 arrest, including prior to a detention hearing while in secure 26 27 detention care. A child shall be represented by legal counsel 2.8 at all stages of all court proceedings unless the right to counsel is freely, knowingly, and intelligently waived by the 29 30 child. If the child appears without counsel, the court shall 31

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advise the child of his or her rights with respect to 1 2 representation of court-appointed counsel. 3 (2) If the parents or legal guardian of an indigent 4 child are not indigent but refuse to employ counsel, the court shall appoint counsel pursuant to s. 27.52 to represent the 5 6 child at the detention hearing and until counsel is provided. 7 Costs of representation shall be are hereby imposed as provided by ss. 27.52 and 938.29. Thereafter, the court may 8 shall not appoint counsel for an indigent child who has with 9 nonindigent parents or <u>a nonindigent</u> legal guardian but shall 10 order the parents or legal guardian to obtain private counsel. 11 12 A parent or legal quardian of an indigent child who has been 13 ordered to obtain private counsel for the child and who willfully fails to follow the court order shall be punished by 14 the court in civil contempt proceedings. If a parent or legal 15 quardian is also an alleged victim in the case, the court may 16 not order the parents or legal guardian to obtain private 17 18 counsel but shall appoint counsel pursuant to s. 27.52 to represent the indigent child. At the disposition of the case 19 and upon a finding by the court that a parent or legal 2.0 21 guardian is a victim of the offense, the parents or legal quardian shall not be liable for fees, charges, or costs under 22 23 s. 27.52, s. 938.29, or this chapter. Section 3. This act shall take effect July 1, 2006. 2.4 25 26 27 2.8 29 30 31

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1		STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR
2		<u>Senate Bill 526</u>
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4 5		Clarifies proposed language for modifying the point when the public defender would be required to represent an indigent child under s. 27.51(1), F.S.
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6 7		Clarifies proposed language for the point when a child's right to counsel attaches under s. 985.203(1), F.S.
8	t	Clarifies proposed language regarding a child's waiver of the right to counsel. Provides that a child must be
9		advised by counsel prior to waiving his or her right to counsel.
10	a	Provides clarification regarding when counsel is
11		authorized to provide advice to a child. Specifies that counsel m ay provide advice any time after the child's right to counsel attaches.
12 Provides clarification r	Provides clarification regarding the nonliability of the	
13	pa	parents or legal guardian in cases where a parent or legal guardian is the victim of the offense in the case.
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