

CHAMBER ACTION

1 The Juvenile Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to juvenile defendants; amending s. 27.51,  
7 F.S.; requiring that the public defender represent an  
8 indigent child taken into custody for a felony, a  
9 misdemeanor, or criminal contempt; amending s. 985.203,  
10 F.S.; requiring that a child be given a meaningful  
11 opportunity to confer with counsel; requiring that the  
12 court appoint counsel for an indigent child if the child's  
13 parent or legal guardian is an alleged victim in the case;  
14 providing that the parents or legal guardian shall not be  
15 liable for fees, charges, or costs upon a finding by the  
16 court that a parent or legal guardian is a victim of the  
17 offense; providing an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21 Section 1. Subsections (1) and (2) of section 27.51,  
22 Florida Statutes, are amended to read:

23 27.51 Duties of public defender.--

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

27 (a) Under arrest for, or charged with, a felony;

28 (b) Under arrest for, or charged with:

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

31 2. A violation of chapter 316 punishable by imprisonment;

32 3. Criminal contempt; or

33 4. A violation of a special law or county or municipal  
34 ordinance ancillary to a state charge, or if not ancillary to a  
35 state charge, only if the public defender contracts with the  
36 county or municipality to provide representation pursuant to ss.  
37 27.54 and 125.69.

38  
39 The public defender may ~~shall~~ not provide representation under  
40 ~~pursuant to~~ this paragraph if the court, before ~~prior to~~ trial,  
41 files in the cause an order of no imprisonment as provided in s.  
42 27.512;

43 (c) Who is a child taken into custody for a felony, a  
44 misdemeanor, or criminal contempt or who is facing delinquency  
45 proceedings under chapter 985 ~~Alleged to be a delinquent child~~  
46 ~~pursuant to a petition filed~~ before a circuit court;

47 (d) Sought by petition filed in such court to be  
48 involuntarily placed as a mentally ill person under part I of  
49 chapter 394, involuntarily committed as a sexually violent  
50 predator under part V of chapter 394, or involuntarily admitted  
51 to residential services as a person with developmental

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52 disabilities under chapter 393. A public defender may ~~shall~~ not  
 53 represent any plaintiff in a civil action brought under the  
 54 Florida Rules of Civil Procedure, the Federal Rules of Civil  
 55 Procedure, or the federal statutes, or represent a petitioner in  
 56 a rule challenge under chapter 120, unless specifically  
 57 authorized by statute;

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

60 (f) Is appealing a matter in a case arising under  
 61 paragraphs (a)-(d).

62 (2) Except as provided in s. 985.203, the court may not  
 63 appoint the public defender to represent, even on a temporary  
 64 basis, any person who is not indigent. The court, however, may  
 65 appoint private counsel in capital cases as provided in ss.  
 66 27.40 and 27.5303.

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

69 985.203 Right to counsel.--

70 (1) A child is entitled to representation by legal counsel  
 71 at all stages of any proceedings under this part. If the child  
 72 and the parents or other legal guardian are indigent and unable  
 73 to employ counsel for the child, the court shall appoint counsel  
 74 pursuant to s. 27.52. Determination of indigence and costs of  
 75 representation shall be as provided by ss. 27.52 and 938.29.  
 76 Legal counsel representing a child ~~who exercises the right to~~  
 77 ~~counsel~~ shall be allowed to provide advice and counsel to the  
 78 child at any time after ~~subsequent to~~ the child's arrest,  
 79 including before ~~prior to~~ a detention hearing while the child is

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80 in secure detention care. A child shall be represented by legal  
81 counsel at all stages of all court proceedings unless the right  
82 to counsel is freely, knowingly, and intelligently waived by the  
83 child after the child has been given a meaningful opportunity to  
84 confer with counsel. If the child appears without counsel, the  
85 court shall advise the child of his or her rights with respect  
86 to representation of court-appointed counsel.

87 (2) If the parents or legal guardian of an indigent child  
88 are not indigent but refuse to employ counsel, the court shall  
89 appoint counsel pursuant to s. 27.52 to represent the child at  
90 the detention hearing and until counsel is provided. Costs of  
91 representation shall be ~~are hereby~~ imposed as provided by ss.  
92 27.52 and 938.29. Thereafter, the court may ~~shall~~ not appoint  
93 counsel for an indigent child who has ~~with~~ nonindigent parents  
94 or a nonindigent legal guardian but shall order the parents or  
95 legal guardian to obtain private counsel. A parent or legal  
96 guardian of an indigent child who has been ordered to obtain  
97 private counsel for the child and who willfully fails to follow  
98 the court order shall be punished by the court in civil contempt  
99 proceedings. If a parent or legal guardian is also an alleged  
100 victim in the case, the court may not order the parents or legal  
101 guardian to obtain private counsel but shall appoint counsel  
102 pursuant to s. 27.52 to represent the indigent child. At the  
103 disposition of the case and upon a finding by the court that a  
104 parent or legal guardian is a victim of the offense, the parents  
105 or legal guardian shall not be liable for fees, charges, or  
106 costs under s. 27.52, s. 938.29, or this chapter.

107 Section 3. This act shall take effect July 1, 2006.