

HB 7

2007

1 A bill to be entitled
 2 An act relating to juvenile defendants; amending s. 27.51,
 3 F.S.; requiring that the public defender represent an
 4 indigent child taken into custody under specified
 5 delinquency provisions; amending s. 985.033, F.S.;
 6 requiring that a child be represented at a specified point
 7 in delinquency court proceedings unless the right to
 8 counsel is waived after receiving advice of counsel;
 9 providing that counsel be permitted to advise a child
 10 after a specified point in delinquency court proceedings;
 11 requiring that the court appoint counsel for an indigent
 12 child if the child's parent or legal guardian is the
 13 alleged victim in the case; providing that the parent or
 14 legal guardian is not liable for fees, charges, or costs
 15 upon a finding by the court that a parent or legal
 16 guardian is a victim of the offense; providing an
 17 effective date.

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

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 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.--

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 under s. 985.101 or
 44 s. 985.105 ~~Alleged to be a delinquent child pursuant to a~~
 45 ~~petition filed before a circuit court;~~

46 (d) Sought by petition filed in such court to be
 47 involuntarily placed as a mentally ill person under part I of
 48 chapter 394, involuntarily committed as a sexually violent
 49 predator under part V of chapter 394, or involuntarily admitted
 50 to residential services as a person with developmental
 51 disabilities under chapter 393. A public defender may ~~shall~~ not
 52 represent any plaintiff in a civil action brought under the
 53 Florida Rules of Civil Procedure, the Federal Rules of Civil
 54 Procedure, or the federal statutes, or represent a petitioner in
 55 a rule challenge under chapter 120, unless specifically
 56 authorized by statute;

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

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

61 (2) Except as provided in s. 985.033, the court may not
 62 appoint the public defender to represent, even on a temporary
 63 basis, any person who is not indigent. The court, however, may
 64 appoint private counsel in capital cases as provided in ss.
 65 27.40 and 27.5303.

66 Section 2. Subsections (1) and (3) of section 985.033,
 67 Florida Statutes, are amended to read:

68 985.033 Right to counsel.--

69 (1) A child shall be represented ~~is entitled to~~
 70 ~~representation~~ by legal counsel at all stages of any delinquency
 71 court proceedings occurring after the child has been taken into
 72 custody under s. 985.101 or s. 985.105, unless the right to
 73 counsel is freely, knowingly, and intelligently waived by the
 74 child after he or she has been advised by counsel under this
 75 ~~chapter~~. If the child and the parents or other legal guardian
 76 are indigent and unable to employ counsel for the child, the
 77 court shall appoint counsel under s. 27.52. Determination of
 78 indigence and costs of representation shall be as provided by
 79 ss. 27.52 and 938.29. ~~Legal Counsel representing a child who~~
 80 ~~exercises the right to counsel~~ shall be allowed to provide
 81 advice and counsel to the child at any time after the child has
 82 been taken into custody under s. 985.101 or s. 985.105
 83 ~~subsequent to the child's arrest, including prior to a detention~~
 84 ~~hearing while in secure detention care. A child shall be~~

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85 ~~represented by legal counsel at all stages of all court~~
86 ~~proceedings unless the right to counsel is freely, knowingly,~~
87 ~~and intelligently waived by the child.~~ If the child appears
88 without counsel, the court shall advise the child of his or her
89 rights with respect to representation of court-appointed
90 counsel.

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

111 Section 3. This act shall take effect July 1, 2007.