

The Florida Senate
PROFESSIONAL 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: SB 88

INTRODUCER: Senators Wise and Lynn

SUBJECT: Indigent Juvenile Defendant Representation

DATE: March 7, 2007

REVISED: _____

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

I. Summary:

The bill would change the timing of when the public defender is required, under s. 27.51(1), F.S., to represent an indigent child from at the time when such child is “[a]lleged to be a delinquent child pursuant to a petition filed before a circuit court” to when such child is “taken into custody under s. 985.101 or s. 985.105.” According to the Florida Public Defenders 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 of when a child’s right to counsel attaches. The bill adds to the current waiver of counsel provision by 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 anytime after he or she has been taken into custody under s. 985.101 or s. 985.105, 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.*

are 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 985.033, 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.³

Section 985.033(1), F.S., provides that a youth shall be represented by legal counsel at all stages of any delinquency court proceedings under 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 by court-appointed counsel.

Sections 985.101 and 985.105, F.S., delineate the circumstances when a child may be picked up and brought into custody by a law enforcement officer or a youth custody officer. These circumstances include the following: upon lawful arrest for a delinquent act or violation of law; upon a court order (based on sworn testimony) either before or after a petition for delinquency is filed; upon failure to appear in court after proper notice; and upon probable cause to believe there has been a violation of probation, home detention, or conditional release supervision, or there has been an escape from commitment. Section 985.105, F.S., limits when a youth custody officer is authorized to take a child into custody to circumstances involving a violation of probation, home detention, or conditional release supervision, or a failure to appear in court after proper notice.

III. Effect of Proposed Changes:

The bill would change the timing of when the public defender is required to represent an indigent child from at the time when the child is "[a]lleged to be a delinquent child pursuant to a petition filed before a circuit court" to when the child is "taken into custody under s. 985.101 or s. 985.105." This change would require the public defender to represent an indigent child at the time that he or she has been taken 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.⁴

The bill would make the provision in s. 985.033(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

³ Section 27.52(6), F.S.

⁴ FLA. DEP'T OF JUVENILE JUSTICE, BILL ANALYSIS, HBs 7, 53, SB 88, 2007 Sess., at 2 (Fla. 2007).

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.”⁵ The bill clarifies that counsel shall be allowed to provide advice to the child anytime after he or she has been taken into custody under s. 985.101 or s. 985.105, F.S.

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.

The bill provides that it takes effect on July 1, 2007.

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 Defenders 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 significantly affected and others would not. According to the association, in

⁵ *Amendments to the Florida Rules of Juvenile Procedure*, 894 So. 2d at 880.

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 becomes law.

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 relating to a child's consultation with an attorney prior to his or her waiver of the right to counsel. The Court did, however, require that any waiver of counsel be in writing.⁶ Moreover, it required that a parent, legal custodian, or attorney verify that the child discussed the waiver and that the child appeared to knowingly and voluntarily make such waiver.⁷

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. Because of this observation, the Court suggested that the Legislature consider implementing statutory revisions regarding this waiver requirement, rather than the Court adopting the rule advocated by the Rules Committee. The Court clarified it was not rejecting the proposed rule change, but rather deferring its consideration until after the Legislature had an opportunity to act on it. 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.⁸

Similarly, in the fall of 2006, the National Juvenile Defender Center conducted an assessment of access to counsel and the quality of representation in delinquency proceedings in Florida. One of its recommendations provided that children should not be allowed to waive the right to counsel without first consulting with an attorney.⁹

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶ FLA. R. JUV. P. 8.165(a).

⁷ FLA. R. JUV. P. 8.165(b)(3).

⁸ *Amendments to the Florida Rules of Juvenile Procedure*, 894 So. 2d at 881.

⁹ PATRICIA PURITZ & CATHRYN CRAWFORD, NAT'L JUVENILE DEFENDER CTR., *FLORIDA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS* 66 (2006), available at <http://www.njdc.info/pdf/Florida%20Assessment.pdf>.

VIII. Summary of Amendments:

None.

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