

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1211 Juvenile Justice  
**SPONSOR(S):** Public Safety & Domestic Security Policy Committee; Garcia  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	7 Y, 0 N, As CS	Padgett	Kramer
2)	Criminal & Civil Justice Policy Council	11 Y, 1 N	Padgett	Havlicak
3)	Criminal & Civil Justice Appropriations Committee		Darity	Davis
4)	Full Appropriations Council on General Government & Health Care			
5)				

**SUMMARY ANALYSIS**

The bill makes changes to the juvenile justice chapter of statute, along with conforming changes to other relevant statutes such as the “Children and Families in Need of Services” (CINS/FINS) statute and the “Comprehensive Child and Adolescent Mental Health Services Act.” Specifically, the bill:

- Encourages the diversion of youth 9 years of age or younger who are found by a court to pose no danger to the community and are unlikely to reoffend;
- Provides changes to the “child in need of services” definition to allow these youth to be served by the CINS/FINS network;
- Promotes the use of restorative justice practices to support victims of juvenile delinquency;
- Supports local community organizations that are aimed at reducing juvenile delinquency in the geographical areas that generate the most referrals, which may help reduce over-representation of particular groups within the juvenile justice system;
- Adds counties, municipalities and the Department of Juvenile Justice (DJJ) to the specified entities that are encouraged to create pre-arrest or post-arrest diversion programs for youth 9 years of age or younger and youth who are first time misdemeanants;
- Requires the DJJ to validate the detention risk assessment instrument and adds two child advocates to the detention risk assessment instrument committee;
- Expands the number of additional members that may be added to a juvenile justice circuit board from 3 to 5, at the discretion of the board, to adequately reflect the community diversity on the board; and
- Makes the court primarily responsible for determining the appropriate restrictiveness level for a child committed to a residential program.

This bill does not appear to have a fiscal impact on state government.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Emotional Disturbance Risk Factors

Section 394.492(4), F.S., defines a "child or adolescent at risk of emotional disturbance" as a person under 18 years of age who has an increased likelihood of becoming emotionally disturbed because of certain specified risk factors. Currently, the Department of Children and Family Services (DCF) uses this definition to determine which youth to serve through the Comprehensive Child and Adolescent Mental Health Services Act.

The bill amends the definition of "child or adolescent at risk of emotional disturbance" in s. 394.492, F.S., the Comprehensive Child and Adolescent Mental Health Services Act, to include the additional risk factor of "being 9 years of age or younger at the time of referral for a delinquent act." This change will allow those youth who qualify to receive treatment services through the community based care network.

##### Child in Need of Services

Sections 984.03(9), F.S., and 985.03(7), F.S., define "children in need of services," as a youth who persistently runs away, persistently disobeys his or her parents, or is habitually truant. The definition excludes a youth who has an active referral to the DJJ for a delinquent act from being served by the CINS/FINS network, resulting in the CINS/FINS shelters being unavailable to this youth. These shelters provide short-term services such as crisis intervention, case management, counseling, clothing, food, and shelter on a 24-hour basis. (In FY 07-08, according to the DJJ, there were 578 individual youth, ages nine and younger, that generated 696 referrals to the department.)

The bill amends the definition of "child in need of services" in the CINS/FINS statute, s. 984.03(9), F.S., to include youth who are 9 years of age or younger who have a delinquency referral. As a result, these youth will be able to receive CINS/FINS services even though an active referral to the DJJ exists.

The bill amends the definition of "child in need of services" in the delinquency statute, s. 985.03(7), F.S., just as it does in the CINS/FINS statute, s. 984.03(9), F.S.

##### Diversion

Section 985.125, F.S., allows a law enforcement agency or a school district, in cooperation with the state attorney, to create a prearrest or postarrest diversion program. Diversion is a process designed to

keep a youth from entering the juvenile justice system through the legal process. Diversion programs include community arbitration, Juvenile Alternative Services Program (JASP), teen court, civil citation, boy scouts and girl scouts, boys and girls clubs, mentoring programs, and alternative schools.

The bill adds counties, municipalities, and the DJJ as qualified entities that may establish prearrest and postarrest diversion programs by amending s. 985.125, F.S. It also encourages the use of prearrest and postarrest diversion programs for first-time misdemeanants and youth who are 9 years of age or younger.

### Children Under 9 Years of Age

The bill creates three new subsections under s. 985.02, F.S., providing legislative intent language for the juvenile justice system. The newly created subsection (9) provides a finding that very young children need age-appropriate services to prevent future delinquent acts. It specifically encourages the diversion of youth 9 years of age or younger who are found by the court to pose no danger to the community and are unlikely to recidivate. It also requires the DJJ to cooperate with the DCF in providing the most appropriate mental health and substance abuse services to these youth. (According to the DJJ, it has been communicating with the DCF regularly about these youth who are served by both agencies. An analysis by the DJJ shows that the DCF had contact with approximately 30 percent of the youth age 9 and younger who were referred to DJJ for a delinquent act.)

### Restorative Justice

The bill creates s. 985.02(10), F.S. which provides legislative intent language on restorative justice, emphasizing the importance of focusing on repairing the damage done to the victim by the delinquent youth, making the youth realize the harm he or she caused, and restoring the victim's loss.

### Minority Over-Representation

Minority over-representation exists when the number of youth detained or confined in secure detention facilities, secure correctional facilities, or jails who are members of minority groups exceeds the proportion such groups represent in the general population. According to the Juvenile Justice Blueprint Commission, "the disproportionate representation of minorities exists for both males and females in Florida's juvenile justice system....at every point in the juvenile justice system."<sup>1</sup> Continuing, "in nine of the 20 circuits, more than 40% of the youth referred...are black. In seven circuits, more than 60% of youth are black."<sup>2</sup>

According to the DJJ, it is implementing a coordinated Disproportionate Minority Contact (DMC) strategy through the creation of a DMC Task Force, which will work toward ensuring equal and fair treatment for every youth, regardless of their racial or ethnic background. The DMC Task Force consists of a volunteer group of juvenile justice stakeholders that will assist the department in bringing awareness and solutions to the issue of minority overrepresentation in the juvenile justice system.

The bill creates legislative intent language to ensure the juvenile justice system does not over-represent any particular group of youth throughout the continuum of care.

### Risk Assessment Instrument

Section 985.245, F.S., requires a detention risk assessment instrument to be developed by the DJJ in agreement with representatives of various associations, including the state attorneys, public defenders, sheriffs, police chiefs, and circuit judges. All determinations and court orders regarding detention placements must be based on a risk assessment of the youth, except in the case of a youth charged with domestic violence. According to the DJJ, the current risk assessment instrument has been used since 1992, and it is in the process of being validated.

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<sup>1</sup> Report of the Blueprint Commission, "Getting Smart About Juvenile Justice in Florida," p. 46 (2008).

<sup>2</sup> Id.

The bill amends s. 985.245, F.S., providing for a Detention Risk Assessment Instrument. It requires the DJJ to have the risk assessment instrument independently validated as well as evaluated to determine if the instrument contributes to disproportionate minority contact. Under the bill, every 7 years the DJJ must review the population, policies, and procedures affecting the use of detention. Additionally, the bill revises the reviewing committee to include 2 new representatives from child advocacy organizations appointed by the DJJ Secretary.

### Juvenile Justice Circuit Boards

Section 985.664, F.S., authorizes the creation of a juvenile justice circuit board in each of the 20 judicial circuits and a juvenile justice county council in each of the 67 counties. Each county council appoints representatives to serve on the circuit board. The county councils and circuit boards serve as advisors to the DJJ. Currently, the number of additional members that may be added to a juvenile justice circuit board to adequately reflect community diversity is three.

The bill amends s. 985.664, F.S., providing for juvenile justice circuit boards and juvenile justice county councils. It expands the number of additional members that may be added to the juvenile justice circuit boards from 3 to 5 to adequately reflect the community diversity on the boards.

### Judicial Role in Placement Decisions

Currently, if the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the DJJ, such determination must be in writing or on the record of the hearing.<sup>3</sup> The determination must include a specific finding of the reasons for the decision to adjudicate the child delinquent and to commit the child to the DJJ. The juvenile probation officer then recommends the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child. The court must consider the juvenile probation officer's recommendation in making its commitment decision. The court may commit the child to the DJJ at the restrictiveness level identified by the juvenile placement officer, or may order placement at a different restrictiveness level. If the court orders placement at a restrictiveness level that is different from the recommendation of the juvenile probation officer, the court must make a special finding establishing its reasons for disregarding the recommendation by a preponderance of the evidence. Any party may appeal the court's findings resulting in a modified level of restrictiveness.

On January 30, 2009, the Supreme Court of Florida clarified the rationale the court must provide if the court decides to commit the child to a restrictiveness level different from that recommended by the juvenile probation officer.<sup>4</sup> The Supreme Court held that the court must:

- "articulate an understanding of the respective characteristics of the opposing restrictiveness levels..." and
- "explain logically and persuasively explain why, in light of these differing characteristics, one level is better suited to serving the rehabilitative needs of the juvenile...and the ability of the State to protect the public."<sup>5</sup>

The Court held that reasons unconnected to the above analysis cannot be used to explain why one restrictiveness level is more appropriate than another.<sup>6</sup>

The bill includes the legislative finding that the court is in the best position to determine whether or not to commit a child to the DJJ and determine the most appropriate restrictiveness level. The bill also gives the court primary authority to determine the appropriate restrictiveness level for secure residential

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<sup>3</sup> Section 985.433(7), F.S.

<sup>4</sup> E.A.R. v. State, No. SC08-506 (Fla. January 30, 2009).

<sup>5</sup> Id.

<sup>6</sup> Id.

placement. As a result, the bill changes the juvenile probation officer's role into an advisory position.<sup>7</sup> Specifically, it would eliminate the requirement that the court make a specific finding by a preponderance of the evidence in order to have a child placed at a restrictiveness level different than that recommended by the juvenile probation officer.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 394.492, F.S., relating to definitions.

Section 2: Amends s. 984.03, F.S., relating to definitions.

Section 3: Amends s. 985.02, F.S., relating to legislative intent for the juvenile justice system.

Section 4: Amends s. 985.03, F.S., relating to definitions.

Section 5: Amends s. 985.125, F.S., relating to prearrest or postarrest diversion programs.

Section 6: Amends s. 985.245, F.S., relating to the risk assessment instrument.

Section 7: Amends s. 985.664, F.S., relating to juvenile justice boards and juvenile justice councils.

Section 8: Amends s. 985.43, F.S., relating to predisposition reports; other evaluations.

Section 9: Amends s. 985.433, F.S., disposition hearings in delinquency cases.

Section 10: Provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>7</sup> In practice, this provision may produce a different result in a very limited number of cases. In an effort to examine judicial satisfaction with DJJ recommended restrictiveness levels, House staff recently asked the DJJ to identify, over the last three years, the percentage of cases in which judges agreed with the restrictiveness level recommended by the Department commitment manager. This data indicated that judges agreed with the recommendations of DJJ commitment managers in the overwhelming majority of cases, on average approximately 85 percent. However, there were several circuits, the 1<sup>st</sup>, 3<sup>rd</sup>, 8<sup>th</sup> and 17<sup>th</sup>, that had consistently and substantially lower rates of agreement. All but one of these circuits are in the North Region of the Department of Juvenile Justice. *Data provided to House Juvenile Justice Staff by the Department of Juvenile Justice, October 2007.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill does not appear to have a fiscal impact on state government.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill contains some of the recommendations of the Juvenile Justice Blueprint Commission.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 19, 2009, the Public Safety & Domestic Security Committee adopted an amendment to the bill. The amendment provides the court is primarily responsible for determining the appropriate restrictiveness level for a child committed to a residential program.