

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1475 Juvenile Justice
SPONSOR(S): Public Safety & Domestic Security Policy Committee; Rouson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2094

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	7 Y, 0 N, As CS	Padgett	Kramer
2)	Criminal & Civil Justice Policy Council		Padgett	Havlicak
3)	Criminal & Civil Justice Appropriations Committee			
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 recidivate;
- Provides changes to the “child in need of services” definition to allow these youth to be served by the CINS/FINS network;
- 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;
- Provides rulemaking authority to govern the procedure for ordinary medical care, mental health, substance abuse, and developmental disability services in the DJJ facilities and programs;
- Authorizes the court to commit a juvenile mother or expectant juvenile mother to the DJJ for placement in a mother-infant residential program and requires the DJJ to adopt rules to govern this program;
- Transfers training responsibility from the defunct Juvenile Justice Standards and Training Commission to the DJJ; and
- Makes the court primarily responsible for determining the appropriate restrictiveness level for a child committed to a residential program.

According to DJJ, the bill will not have a fiscal impact.

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.

Background Screenings

Section 985.644, F.S., outlines the DJJ's contracting authority, its personnel standards, and its background screening requirements for providers, employees, volunteers, owners, and operators. There are several duplicative provisions in this section relating to the DJJ's authority to contract with the federal government, its personnel standard requiring good moral character, and its background screening exception for certain volunteers. There are also several obsolete provisions referencing the DCF in this section.

The bill amends s. 985.644, F.S., prescribing personnel screening and standards, by deleting several duplicative provisions relating to the DCF personnel standards. (The DCF uses s. 39.001, F.S., for its authority to do background screening on its employees so it does not need to be included in the DJJ statute.)

The bill also removes a background screening exemption for DJJ volunteers who work less than 40 hours a month to conform the statute with current practice. (The DJJ currently screens all volunteers who work directly with youth, regardless of the number of volunteer hours worked.)

Section 435.04(4)(b), F.S., prescribes Level 2 background screening standards. Applicants for positions with the DJJ are disqualified from employment if they have committed an act of "domestic violence as

defined in s. 741.30.” However, the reference to s. 741.30, F.S., does not define acts of domestic violence; it addresses domestic violence injunctions.

The bill makes a technical correction in s. 435.04, F.S., prescribing Level 2 background screening requirements, so that the statutory reference to domestic violence is to the definition of domestic violence rather than domestic violence injunctions.

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.

Medical Care

Section 985.03(37), F.S., provides a definition of “necessary medical treatment,” but no definition of “ordinary medical care.” Section 985.601(9)(b)7., F.S., requires the DJJ to adopt rules governing medical attention, health, and comfort items in detention facilities; however, there is no such requirement in the rules for providing medical attention in other areas of the continuum of care. As a result, the provision of care is left to policies that are subject to challenge (like the 2006 Health Service Manual that currently serves as a guide for contracted health services) according to the DJJ.

The bill adds a definition of “ordinary medical care in department facilities and programs” to include routine medical procedures such as “inoculations, physical examinations, remedial treatment for minor illnesses and injuries, preventive services, medication management, chronic disease detection and treatment, and other medical procedures that . . . do not involve hospitalization, surgery, or use of general anesthesia.”

The bill amends s. 985.601, F.S., administering the juvenile justice continuum, to require the DJJ to adopt rules for ordinary medical care, mental health services, substance abuse treatment services, and developmental disabilities services. Additionally, the bill requires the DJJ to coordinate its rulemaking effort with the DCF and the Agency for Persons with Disabilities to ensure there is no encroachment on either agency’s substantive jurisdiction.

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.

Mother/Infant Programs

Section 985.441, F.S., governs the operation of commitment facilities. Currently, the DJJ operates a 20-bed mother/infant program in Miami-Dade County; however, there is no statutory provision for programs designed for pregnant girls or mothers with infants.

The bill authorizes the court to commit a juvenile mother or expectant juvenile mother to the DJJ for placement in a mother-infant program by amending s. 985.441, F.S. The mother-infant program must be licensed as a childcare facility under s. 402.308, F.S. The bill also requires the DJJ to adopt rules to govern this program.

Juvenile Justice Standards and Training Commission

Section 985.66, F.S., prescribes standards for the DJJ's juvenile justice training academies, creates the Juvenile Justice Standards and Training Commission, and establishes the Juvenile Justice Training Trust Fund. Subsection (9) of this section provided for the termination of the Juvenile Justice Standards and Training Commission in June 2001. Since that time, the DJJ has taken over the responsibilities of the Commission in operating its training programs.

The bill amends s. 985.66, F.S., juvenile justice training academies, to delete obsolete references to the Juvenile Justice Standards and Training Commission (which was terminated on June 30, 2001) and authorizes the DJJ to continue operating the Juvenile Justice Training Program. It also defines "delinquency program staff" to include supervisory and direct care staff and support staff having direct contact with youth in a delinquency program owned and operated by the DJJ.

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.)

Judicial Role in Residential 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.¹ 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

¹ Section 985.433(7), F.S.

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.² 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."³

The Court held that reasons unconnected to the above analysis cannot be used to explain why one restrictiveness level is more appropriate than another.⁴

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 placement. As a result, the bill changes the juvenile probation officer's role into an advisory position.⁵ 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. 435.04, F.S., relating to level II screening standards.

Section 3: Amends s. 984.03, F.S., relating to definitions.

Section 4: Amends s. 985.02, F.S., relating to legislative intent for the juvenile justice system.

Section 5: Amends s. 985.03, F.S., relating to definitions.

Section 6: Amends s. 985.125, F.S., relating to prearrest or postarrest diversion programs.

Section 7: Amends s. 985.441, F.S., relating to commitment.

Section 8: Amends s. 985.601, F.S., relating to administering the juvenile justice continuum.

Section 9: Amends s. 985.644, F.S., relating to departmental contracting powers; personnel standards and screening.

² E.A.R. v. State, No. SC08-506 (Fla. January 30, 2009).

³ *Id.*

⁴ *Id.*

⁵ 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 1st, 3rd, 8th and 17th, 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.*

Section 10: Amends s. 985.66, F.S., relating to juvenile justice training academies; Juvenile Justice Trust Fund.

Section 11: Amends s. 985.48, F.S., relating to juvenile sexual offender commitment programs; sexual abuse intervention networks.

Section 12: Amends s. 985.721, F.S., relating to escapes from secure detention or residential commitment facility.

Section 13: Amends s. 985.43, F.S., relating to predisposition reports; other evaluations.

Section 14: Amends s. 985.433, F.S., relating to disposition in delinquency cases.

Section 15: Provides an effective date.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to DJJ, the bill will not have a fiscal impact.

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:

The bill provides rule-making authority to govern the procedure for ordinary medical care, mental health, substance abuse, and developmental disability services in DJJ facilities and programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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.