

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 2128

INTRODUCER: Committee on Children, Families, and Elder Affairs and Senator Crist

SUBJECT: Juvenile Justice

DATE: April 1, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Ray	Walsh	CF	Fav/CS
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 2128 makes changes to the juvenile justice chapter, along with conforming changes to a few 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” in an effort to enhance services for youth in the juvenile justice system. Specifically, the bill:

- Encourages the diversion of youth nine 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;
- 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 or the department) to the specified entities that are encouraged to create pre-arrest or post-arrest diversion

programs for youth nine years of age or younger and youth who are first time misdemeanants;

- Requires DJJ to validate the detention risk assessment instrument and adds two child advocates to the detention risk assessment instrument committee; and
- Expands the number of additional members that may be added to a juvenile justice circuit board from three to five to adequately reflect the community diversity on the board.

The bill provides an effective date of July 1, 2009.

This bill substantially amends the following sections of the Florida Statutes: 394.492, 984.03, 985.02, 985.03, 985.125, 985.245, and 985.664.

II. Present Situation:

The mission of DJJ is to increase public safety by reducing juvenile delinquency through effective prevention, intervention and treatment services that strengthen families and turn around the lives of troubled youth.¹ In Fiscal Year 2007-08, 89,876 youth were referred to the department for delinquency offenses. Referrals are the juvenile equivalent of arrests and are the first step in the delinquency process.²

The Department of Children and Families (DCF) and DJJ are working together to improve outcomes for children and youth served by both agencies. One area of focus has become the need to divert young children from the juvenile justice system, while identifying and addressing contributing factors to their delinquency.³

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, DCF uses this definition to determine which youth to serve through the Comprehensive Child and Adolescent Mental Health Services Act.

CINS/FINS

Child In Need of Services (CINS): This is an adjudication status for a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by DJJ or DCF for an adjudication of dependency or delinquency. The court must also find the child:

- To have persistently run away from the child’s parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior; or
- To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation pursuant to and through voluntary

¹ Department of Juvenile Justice website, available at: <http://www.djj.state.fl.us/AboutDJJ/index.html> (last visited March 27, 2009).

² Florida Government Accountability Report, Department of Juvenile Justice, available at: <http://www.oppaga.state.fl.us/profiles/1073/> (last visited March 27, 2009).

³ Department of Children and Families, Staff Analysis and Economic Impact, SB 2128, on file with the committee.

- participation by the child's parents or legal custodians and by the child in family counseling services, and treatment offered; or
- To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodian, and to be beyond their control despite efforts by the child's parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior.⁴

In Fiscal Year 2007-08, there were 578 individual youth, ages nine and younger, that generated 696 referrals to DJJ.⁵

Families In Need of Services (FINS): A family that has a child for whom there is no pending investigation of abuse, neglect, or abandonment or no court ordered supervision by DJJ or DCF for an adjudication of dependency or delinquency. The court must also find that the child has been:

- Running away; or
- Disobeying the reasonable and lawful demands of parents or legal guardian or custodian and being beyond their control; or
- Truant from school or engaging in other behavior that places the child at risk of future abuse, neglect, or abandonment, or at risk of entering the juvenile justice system.

Diversion

Diversion uses programs that are alternatives to the formal juvenile justice system for youth who have been charged with a minor crime. These individuals share certain high-risk factors, including first offense at the age 15 or younger, poor school performance and truancy, lack of parental supervision, substance abuse problems, or gang affiliation. Diversion programs include Community Arbitration, Juvenile Alternative Services Program (JASP), Teen Court, Civil Citation, Boy and Girl Scouts, Boys and Girls Clubs, mentoring programs, and alternative schools. These programs employ a variety of non-judicial sanctions, including:⁶

- Restitution (payment) to the victim(s);
- Community service hours;
- Letter of apology to the victim(s);
- Curfew;
- Forfeiture of driver's license;
- Encouragement to avoid contact with co-defendants, friends, or acquaintances who are deemed to be inappropriate associations;
- Referrals to local social service agencies; and
- Substance abuse or mental health counseling.

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.

⁴ Sections 984.03, 985.03, F.S.

⁵ *Department of Juvenile Justice 2009 Legislative Session Bill Analysis SB 2128*, on file with the committee.

⁶ Department of Juvenile Justice, Probation and Community Intervention website, available at: <http://www.djj.state.fl.us/Probation/index.html> (last visited March 27, 2009).

Disproportionate Minority Contact

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.”⁷ 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.”⁸

The department 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.⁹

Detention Risk Assessment

Section 985.245, F.S., requires a detention risk assessment instrument to be developed by 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 DJJ, the current risk assessment instrument has been used since 1992, and it is in the process of being validated.¹⁰

Juvenile Justice Boards and Councils

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 DJJ. Currently, the number of additional members that may be added to a juvenile justice circuit board to adequately reflect community diversity is three.

III. Effect of Proposed Changes:**Section 1.**

Committee Substitute for Senate Bill 2128 amends the definition of “Child or adolescent at risk of emotional disturbance” in s. 394.492, F.S., to include the additional risk factor of being nine years of age or younger at the time of referral for a delinquent act. According to DJJ, this change will allow those youth who qualify to receive treatment services through DCF’s community based care network.¹¹

⁷ Report of the Blueprint Commission, “*Getting Smart About Juvenile Justice in Florida*,” p. 46 (2008).

⁸ *Id.*

⁹ See Note 5, *supra*.

¹⁰ *Id.*

¹¹ *Id.*

Section 2.

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 nine 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 DJJ exists.

Section 3.

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 nine 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 DJJ to cooperate with DCF in providing the most appropriate mental health and substance abuse services to these youth. According to DJJ, it has been communicating with DCF regularly about these youth who are served by both agencies. An analysis by DJJ shows that DCF had contact with approximately 30 percent of the youth age nine and younger who were referred to DJJ for a delinquent act.¹²

The new subsection (10) creates 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.

The new subsection (11) creates legislative intent language to ensure the juvenile justice system does not over-represent any particular group of youth throughout the continuum of care.

Section 4.

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. (See Section 2.)

Section 5.

The bill adds counties, municipalities, and 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 nine years of age or younger.

Section 6.

The bill amends s. 985.245, F.S., providing for a Detention Risk Assessment Instrument. It requires 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 seven years DJJ must review the population, policies, and procedures affecting the use of detention. Additionally, the bill revises the reviewing committee to include two new representatives from child advocacy organizations appointed by the DJJ Secretary.

¹² Id.

Section 7.

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 three to five to adequately reflect the community diversity on the boards.

Section 8.

The bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 1, 2009:

- Clarifies Legislative intent relating to overrepresentation of specific groups of youth.

- B. **Amendments:**

None.

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