

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1233 Juvenile Justice
SPONSOR(S): Van Zant
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1850

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Cunningham	Cunningham
2) Rulemaking & Regulation Subcommittee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

This bill makes various changes to ch. 985, F.S., relating to juvenile justice, as well as changes to the "Children and Families in Need of Services" (CINS/FINS) statutes and the "Comprehensive Child and Adolescent Mental Health Services Act." Specifically, the bill:

- Amends the definition of "child or adolescent at risk of emotional disturbance" 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 expand the pool of persons eligible to receive treatment services through the child and adolescent mental health system of care.
- Encourages specified entities to establish prearrest and postarrest diversion programs and provides that youth taken into custody for first-time misdemeanor offenses and youth 9 years of age or younger should be given the opportunity to participate in such programs.
- Requires juvenile probation officers to make a referral to the appropriate CINS/FINS shelter if a child taken into custody for a domestic violence offense is ineligible for secure detention.
- Prohibits a child alleged to have committed a delinquent from being placed in detention due to a misdemeanor charge of domestic violence if the child lives with a family with a history of domestic violence or has been a victim of abuse or neglect.
- Prohibits a child 9 years of age or younger from being placed into secure detention unless the child is charged with a capital felony, life felony, or a first degree felony.
- Requires that a risk assessment instrument, that is effective at predicting risk and avoiding the unnecessary use of secure detention, be developed by the Department of Juvenile Justice (DJJ) in consultation with representatives appointed by specified associations.
- Authorizes the court to commit a child who has been adjudicated delinquent to the Department for placement in a mother-infant program.
- Requires DJJ to submit an annual Comprehensive Accountability Report to the Governor and Legislature detailing the effectiveness of DJJ programs.

The bill does not appear to have a fiscal impact and is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child and Adolescent Mental Health System of Care – Eligibility

Chapter 394, F.S., entitled the “Comprehensive Child and Adolescent Mental Health Services Act,” requires the Department of Children and Families (DCF) to establish a child and adolescent mental health system of care that provides an array of services to meet the individualized service and treatment needs of children¹ and adolescents² who are members of specified target populations. Currently, only individuals who fall within the following categories are eligible to be served through the child and adolescent mental health system of care:

- Children and adolescents who are experiencing an acute mental or emotional crisis.
- Children and adolescents who have a serious emotional disturbance or mental illness.
- Children and adolescents who have an emotional disturbance.
- Children and adolescents who are at risk of emotional disturbance.³

Section 394.492(4), F.S., currently 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 risk factors that include, but are not limited to:

- Being homeless.
- Having a family history of mental illness.
- Being physically or sexually abused or neglected.
- Abusing alcohol or other substances.
- Being infected with human immunodeficiency virus (HIV).
- Having a chronic and serious physical illness.
- Having been exposed to domestic violence.
- Having multiple out-of-home placements.

Effect of the Bill

The bill amends the definition of “child or adolescent at risk of emotional disturbance” 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 expand the pool of persons eligible to receive treatment services through the child and adolescent mental health system of care.

Legislative Intent

Section 985.02, F.S., sets forth the Legislature’s intent for the juvenile justice system. Subsection (3) of the statute provides that it is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

- Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization and deep-end commitment.⁴

Subsection (4) of the statute, relating to juvenile detention, specifies that the Legislature finds that secure detention is appropriate to provide punishment that discourages further delinquent behavior.⁵

¹ Section 394.492(3), F.S., defines the term “child” as “a person from birth until the person's 13th birthday.”

² Section 394.492(1), F.S., defines the term “adolescent” as “a person who is at least 13 years of age but under 18 years of age.”

³ Each of these groups is defined in s. 394.492, F.S.

⁴ Section 985.02(3), F.S.

⁵ Section 985.02(4), F.S.

Subsection (5) of the statute, relating to serious or habitual juvenile offenders, provides the following:

The Legislature finds that fighting crime effectively requires a multipronged effort focusing on particular classes of delinquent children and the development of particular programs. This state's juvenile justice system has an inadequate number of beds for serious or habitual juvenile offenders and an inadequate number of community and residential programs for a significant number of children whose delinquent behavior is due to or connected with illicit substance abuse. In addition, a significant number of children have been adjudicated in adult criminal court and placed in this state's prisons where programs are inadequate to meet their rehabilitative needs and where space is needed for adult offenders. Recidivism rates for each of these classes of offenders exceed those tolerated by the Legislature and by the citizens of this state.⁶

Effect of the Bill

The bill amends s. 985.02(3), F.S., to specify that it is the policy of the state to:

- Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization, deep-end commitment, *and secure detention*.

The bill replaces the language in s. 985.02(4), F.S., specifying that secure detention "is appropriate to provide punishment that discourages further delinquent behavior" with language specifying that secure detention "is appropriate to ensure public safety and guarantee court appearance.

The bill deletes legislative intent language in s. 985.02(5), F.S., relating to serious or habitual juvenile offenders, in its entirety.

The bill also creates two new subsections under s. 985.02, F.S., entitled "children nine years of age or younger" and "restorative justice." The new subsections provide the following:

- Children 9 Years of Age or Younger
 - o The Legislature finds that very young children need age-appropriate services in order to prevent and reduce future acts of delinquency. Children who are 9 years of age or younger may be diverted into prearrest or postarrest programs, civil citation programs, or children-in-need-of-services and families-in-need-of-services programs, or other programs, as appropriate. If, based upon a needs assessment, the child is found to be in need of mental health services or substance abuse treatment services, the department shall cooperate with the parent or legal guardian and the Department of Children and Family Services, as appropriate, to identify the most appropriate services and supports and available funding sources to meet the needs of the child.⁷
- Restorative Justice
 - o It is the intent of the Legislature that the juvenile justice system advance the principles of restorative justice. The department shall focus on repairing the harm to victims of delinquent behavior by ensuring that the child understands the effects of his or her delinquent behavior on the victim and the community and that the child restores the losses of his or her victim.
 - o Offender accountability is one of the principles of restorative justice. The premise of this principle is that the juvenile justice system must respond to delinquent behavior in such a way that the offender is made aware of and takes responsibility for repaying or restoring loss, damage, or injury perpetrated upon the victim and the

⁶ Section 985.02(5), F.S.

⁷ The Department of Juvenile Justice reports that it communicates with DCF regularly about youth who are served by both agencies. According to a FY 07-8 analysis of youth IDs, DCF had contact with approximately 30 percent of the youth age 9 and younger who were referred to the Department for a delinquent act.

community. This goal is achieved when the offender understands the consequences of delinquent behaviors in terms of harm to others; and when the offender makes amends for the harm, loss or damage through restitution, community service, or other appropriate repayment.

Pre-Arrest and Post-Arrest Diversion Programs

Section 985.125, F.S., allows a law enforcement agency or a school district, in cooperation with the state attorney, to establish prearrest or postarrest diversion programs for children who have committed or been alleged to have committed a delinquent act. 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.

Effect of the Bill

The bill specifies that the above-described entities are *encouraged* to establish prearrest or postarrest diversion programs and adds counties, municipalities, and the Department of Juvenile Justice (DJJ) to the list of entities that may establish such programs. The bill also specifies that youth who are taken into custody for first-time misdemeanor offenses and youth 9 years of age or younger should be given the opportunity to participate in a prearrest or postarrest diversion program.

Intake

Section 985.14, F.S., requires the Department to develop an intake system whereby a child brought into intake is assigned a juvenile probation officer. The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child's programmatic needs and risks. The intake process is performed by DJJ through a case management system, and a child's assigned juvenile probation officer serves as the primary case manager.⁸

Currently, s. 985.145(1)(d), F.S., requires a child's juvenile probation officer to ensure that a risk assessment instrument which establishes the child's eligibility for detention has been completed and that the appropriate recommendation was made to the court.

Effect of the Bill

The bill amends s. 985.145(1)(d), F.S., to require a juvenile probation officer to make a referral to the appropriate CINS/FINS shelter if a child is ineligible for secure detention due to a misdemeanor charge of domestic violence if the child lives with a family with a history of domestic violence or if the child has been a victim of abuse or neglect.

Detention – Initial Assessment

Section 985.24, F.S., provides criteria used in determining if a child alleged to have committed a delinquent act qualifies for detention. Subsection (2) of the statute specifies that a child alleged to have committed a delinquent act may not be placed in detention for any of the following reasons:

- To allow a parent to avoid his or her legal responsibilities;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or
- Due to a lack of appropriate facilities.⁹

⁸ See ss. 985.14 and 985.145, F.S.

⁹ Section 985.24(2), F.S.

Effect of the Bill

The bill amends s. 985.24(2), F.S., to specify that a child alleged to have committed a delinquent act may not be placed in detention:

- Due to a misdemeanor charge of domestic violence if the child lives with a family with a history of domestic violence or has been a victim of abuse or neglect, and the decision to place in secure detention is mitigated by the history of trauma faced by the child, unless the child would otherwise be subject to secure detention based on his or her prior history.

The bill also prohibits children 9 years of age or younger from being placed into secure detention unless the child is charged with a capital felony, life felony, or a first degree felony.

Risk Assessment Instrument

Section 985.245(2)(a), F.S., requires a detention risk assessment instrument (RAI) be developed by DJJ in agreement with representatives appointed by the following associations:

- Conference of Circuit Judges of Florida
- Prosecuting Attorneys Association
- Public Defenders Association
- Florida Sheriff's Association
- Florida Association of Chiefs of Police

The parties involved are required to evaluate and revise the RAI as is considered necessary using the method for revision as agreed by the parties.¹⁰

Section 985.245(2)(b), F.S., requires the RAI to take into consideration, but need not be limited to:

- Prior history of failure to appear;
- Prior offenses;
- Offenses committed pending adjudication;
- Any unlawful possession of a firearm;
- Theft of a motor vehicle or possession of a stolen motor vehicle; and
- Probation status at the time the child is taken into custody.

Effect of the Bill

The bill amends s. 985.245(2)(a), F.S., to require that the RAI be developed by DJJ *in consultation with* representatives appointed by above-listed associations. The requirement that the parties involved evaluate and revise the RAI is removed and replaced with language requiring the RAI to be effective at predicting risk and avoiding the unnecessary use of secure detention.

The bill also amends s. 985.245(2)(b), F.S., to require the RAI to accurately predict a child's risk of rearrest or failure to appear. The bill removes "theft of a motor vehicle or possession of a stolen motor vehicle" as a factor that the RAI can consider.

Continued Detention

Section 985.255, F.S., provides criteria the court may use in determining whether to continue to detain a child prior to a detention hearing. Section 985.255(1)(d), F.S., provides the court may continue to detain a child if the child is charged with domestic violence. Additionally, subsection (2) of the statute provides that a child who is charged with committing an offense of domestic violence and who does not meet detention criteria may be held in secure detention if the court makes specific findings.

¹⁰ Section 985.245(2)(a), F.S.

Effect of the Bill

The bill amends s. 985.255(1)(d), F.S., to provide the court may consider only whether the child is charged with *felony* domestic violence when determining whether to continue to detain a child prior to a detention hearing. The bill also amends subsection (2) of the statute to specify that a child who is charged with committing a *felony* offense of domestic violence and who does not meet detention criteria may be held in secure detention if the court makes specific findings.

Commitment – Mother-Infant Programs

Section 985.441, F.S., authorizes a court that has jurisdiction of an adjudicated delinquent child to commit the child to:

- A licensed child-caring agency willing to receive the child.
- The Department at a restrictiveness level defined in s. 985.03, F.S.
- The Department for placement in a program/facility for serious or habitual juvenile offenders.
- The Department for placement in a program or facility for juvenile sexual offenders.

The Department currently operates a 20-bed mother-infant program in Miami-Dade county that serves pregnant and postpartum females ages 14-19. The goal of the program is to return the women back to their communities with skills necessary to lead productive lives and successfully parent their children. At this time, there is no statutory provision allowing a court to commit a child who has been adjudicated delinquent to a mother-infant program.

Effect of the Bill

The bill amends s. 985.441, F.S., to authorize the court to commit a child to the Department for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents. The bill requires the Department's mother-infant program to be licensed as a childcare facility under s. 402.308, F.S., and requires the program to provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of the infants who, upon agreement of the mother, may accompany them in the program. The bill also requires the Department to adopt rules to govern the program.

Comprehensive Accountability Report

Legislative Intent

Section 985.632(1), F.S., provides that it is the intent of the Legislature that the Department:

- Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs of the department which achieve desired performance levels.
- Provide information about the cost of such programs and their differential effectiveness so that the quality of such programs can be compared and improvements made continually.
- Provide information to aid in developing related policy issues and concerns.
- Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.
- Provide a basis for a system of accountability so that each client is afforded the best programs to meet his or her needs.
- Improve service delivery to clients.
- Modify or eliminate activities that are not effective.

Effect of the Bill

The bill adds to the above list that it is the intent of the Legislature that the Department:

- Collect and analyze available statistical data for the purpose of ongoing evaluation of all programs.

The bill also deletes the definition of the term "program effectiveness" and creates the following definitions in s. 985.632(2), F.S.:

- “Program” means any facility, service, or program for youth which is operated by the department or by a provider under contract with the department.
- “Program group” means a collection of programs having sufficient similarity of functions, services, and population to allow appropriate comparison among programs within the group.

Comprehensive Accountability Report

Section 985.632(3), F.S., requires the Department to annually collect and report cost data for every program operated or contracted by the Department. The cost data must conform to a format approved by the Department and the Legislature and must be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The statute also requires the Department to ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. Further, the Department must submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year.¹¹

Effect of the Bill

The bill deletes s. 985.632(3), F.S., in its entirety and replaces it with language requiring the Department to:

- Use a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group.
- Submit a Comprehensive Accountability Report to the appropriate committees of the Legislature and the Governor no later than January 15 of each year.
- Notify the Office of Program Policy Analysis and Government Accountability (OPPAGA) and contract service providers of substantive changes to the methodology.

The bill specifies that the standard methodology must:

- Define common terminology and operational definitions and methods by which the performance of program outputs and outcomes may be measured.
- Specify program outputs for each program and for each program group within the juvenile justice continuum.
- Report cost data for each program operated or contracted by the Department for the fiscal year corresponding to the program outputs and outcomes being reported.

Cost-Effectiveness Model

Section 985.632(4), F.S., currently requires the Department to develop a cost-effectiveness model and apply it to each commitment program. The statute also requires the Department to rank commitment programs based on the cost-effectiveness model and submit a report to specified entities. The Department is also required to develop a work plan to refine the cost-effectiveness model so that the model is consistent with the performance based program budgeting measures approved by the Legislature to the extent the Department deems appropriate.

Effect of the Bill

The bill makes several amendments to s. 985.632(4), F.S. The amendments:

- Replace references to the “cost effectiveness model” with references to the “program accountability measures analysis.”
- Require the Department to apply the program accountability measure analysis to each commitment program and include the results in the comprehensive accountability report.
- Requires the program accountability measures analysis to compare program costs to expected and actual youth recidivism rates.
- Remove the language requiring the Department to rank commitment programs based on the cost-effectiveness model.

¹¹ Section 985.632(3), F.S.

- Replaces the language requiring the Department to develop a work plan to refine the cost-effectiveness model with language requiring the Department to notify OPPAGA and contract service providers of substantive changes to the program accountability measures analysis.

Quality Assurance

Section 985.632(5), F.S., requires the Department to establish a comprehensive quality assurance system for each program operated by the Department or operated by a provider under contract with the Department. The statute also requires the Department to submit an annual report relating to quality assurance to specified entities. The annual report must include specified information about each program component.

Effect of the Bill

The bill removes the requirement that the Department submit the annual quality assurance report and instead requires the Department to include quality assurance information in the Comprehensive Accountability Report.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 984.14, F.S., relating to shelter placement; hearing.

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

Section 4. Amends s. 985.125, F.S., relating to prearrest or postarrest diversion programs.

Section 5. Amends s. 985.145, F.S., relating to responsibilities of juvenile probation officer during intake; screenings and assessments.

Section 6. Amends s. 985.24, F.S., relating to use of detention; prohibitions.

Section 7. Amends s. 985.245, F.S., relating to risk assessment instrument.

Section 8. Amends s. 985.255, F.S., relating to detention criteria; detention hearing.

Section 9. Amends s. 985.441, F.S., relating to commitment.

Section 10. Amends s. 985.45, F.S., relating to liability and remuneration for work.

Section 11. Amends s. 985.632, F.S., relating to quality assurance and cost effectiveness.

Section 12. Reenacts s. 984.13, F.S., relating to taking into custody a child alleged to be from a family in need of services or to be a child in need of services.

Section 13. This bill takes effect July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DJJ reports that this bill will not have a fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 authorizes the Department to adopt rules pursuant to ch. 120, F.S., to govern operation of mother-infant programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES