

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: SB 1850

INTRODUCER: Senator Evers

SUBJECT: Juvenile Justice Reform

DATE: April 1, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Preston	Walsh	CF	Favorable
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill makes changes to the juvenile justice chapter, along with conforming changes to 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:

- 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;”
- 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 back into supervision;
- Promotes the use of restorative justice practices to support victims of juvenile delinquency;
- 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 nine years of age or younger and youth who are first time misdemeanants;
- Allows a youth taken into custody for a misdemeanor domestic violence charge, if he or she has a violent family history or has been abused, to be placed in a Child in need of services/Family in need of services (CINS/FINS) shelter (unless the youth is subject to secure detention because of his or her prior criminal history);
- Requires a juvenile probation officer during intake to recommend referring this type of youth to an appropriate CINS/FINS shelter;
- Prohibits a youth 9 years of age or younger from being placed into secure detention unless the youth has been charged with a capital felony, a life felony, or a felony of the first degree;

- Requires the risk assessment instrument, that should be effective at predicting risk and avoiding the unnecessary use of secure detention, to be developed by the DJJ in consultation with representatives appointed by specified associations;
- Allows for the commitment of a youth who is pregnant, or a mother with an infant, to a mother-infant program;
- Clarifies that youth participating in a work program or in community service under s. 985.45, F.S., are employees of the state for purposes of workers compensation; and
- Consolidates three currently required annual reports into one comprehensive annual report which is due to the Governor and Legislature by January 15 of each year.

This bill substantially amends the following sections of the Florida Statutes: 394.492, 985.02, 985.125, 985.145, 985.24, 985.245, 985.255, 985.441, 985.45, and 985.632.

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 2009-10, 75,166 youth were referred to the DJJ 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 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.⁴ In Fiscal Year 2009-10, there were 391 youth, ages nine and younger, that were referred to DJJ.⁵

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.

According to DCF, children deemed to be “at risk” may only be funded by general revenue or trust funds as the Community Mental Health Block Grant rules prohibit its use for the “at-risk” population. Children’s Mental Health general revenue and trust funds are limited and are used

¹ Department of Juvenile Justice website, available at: <http://www.djj.state.fl.us/AboutDJJ/index.html> (last visited March 15, 2011).

² Florida Government Accountability Report, Department of Juvenile Justice, available at: <http://www.oppaga.state.fl.us/profiles/1073/> (last visited March 15, 2011).

³ Department of Children and Families, 2009 Staff Analysis and Economic Impact, SB 2128, on file with the Children, Families, and Elder Affairs Committee.

⁴ Department of Juvenile Justice, 2010 Legislative Session Bill Analysis SB 1072, on file with the Senate Criminal Justice Committee.

⁵ Department of Juvenile Justice, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Criminal Justice Committee.

primarily for children and adolescents with serious emotional disturbances or emotional disturbances who are not Medicaid-eligible or who have no other available funding source.⁶

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.⁷

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.

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.⁸

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 a first offense at 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:⁹

⁶ Department of Children and Families, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Children, Families, and Elder Affairs Committee.

⁷ Section 985.02(3), F.S.

⁸ Section 985.02(5), F.S.

⁹ Department of Juvenile Justice, Probation and Community Intervention website, available at: <http://www.djj.state.fl.us/Probation/index.html> (last visited March 15, 2011).

- 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.

Intake

Section 985.14, F.S., requires the DJJ 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.¹⁰

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.

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.¹¹

Detention Risk Assessment Instrument

Section 985.245, F.S., requires a detention risk assessment instrument (RAI) 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 (RAI) has been used since 1992, and it is in the process of being validated.¹²

¹⁰ See ss. 985.14 and 985.145, F.S.

¹¹ Section 985.24(2), F.S.

¹² Department of Juvenile Justice, 2009 Legislative Session Bill Analysis SB 2128, on file with the committee.

Continued Detention

A youth charged with domestic violence (misdemeanor or felony) may be held in secure detention (regardless of whether he or she meets detention criteria) if the court makes specific written findings that respite care is not available and it is necessary to place the youth in secure detention to protect the victim from injury.¹³ Such youth is not eligible to be placed in a CINS/FINS shelter.¹⁴

Mother/Infant Commitment Program

Section 985.441, F.S., governs the operation of juvenile 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.

Women in Need of Greater Strength (WINGS) for Life was established in 2001 as a residential commitment program for females in an educational environment. On July 1, 2006, WINGS became a residential commitment treatment program for 20 pregnant or postpartum females and their babies. The mission of the WINGS for Life program is to be committed to celebrating diversity and womanhood by working to enhance the quality of life for the young woman and her child.¹⁵

The objectives of the program are to provide a structured and supervised transition from residential placement to the community and to closely monitor the youth to ensure public safety. The goal is to return these youth back into the mainstream of their communities with the skills to lead productive lives and successfully parent their children. The WINGS for Life program currently has the capacity to serve 20 women ages 14 – 19.¹⁶

Program Review and Reporting Requirements

The DJJ is required to submit to the Governor and Legislature various reports relating to program accountability, cost effectiveness, and performance measures, including the following: the Program Accountability Measures Report, a cost-effectiveness report for residential commitment programs; the Outcome Evaluation Report, a report on program outputs and outcomes; and the Quality Assurance Report, a report evaluating the internal processes in programs to determine the level of performance and the quality of services.¹⁷ The DJJ also publishes annually the Comprehensive Accountability Report (CAR).¹⁸

¹³ Section 985.255(2), F.S.

¹⁴ Section 984.14, F.S.

¹⁵ Department of Juvenile Justice, WINGS website, available at http://www.djj.state.fl.us/Residential/Facilities/south_facilities/WINGS_FOR_LIFE.html (last visited March 15, 2011).

¹⁶ *Id.*

¹⁷ Section 985.632, F.S.

¹⁸ Department of Juvenile Justice, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Criminal Justice Committee.

III. Effect of Proposed Changes:

Section 1

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.¹⁹

Section 2

The bill amends s. 985.02, F.S., relating to legislative intent language as follows. It amends subsection (3) 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.

It replaces the language in subsection (4) 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.

It deletes the legislative intent language in subsection (5) relating to serious or habitual juvenile offenders.

It also creates two new subsections. Subsection (8) 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.

The new subsection (9) 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.

Section 3

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.

¹⁹ *Id.*

Section 4

Amends s. 985.145, F.S., juvenile probation officer responsibilities, to require a juvenile probation officer during intake to recommend referring a youth taken into custody for a misdemeanor domestic violence charge, if he or she has a violent family history or has been abused, to an appropriate CINS/FINS shelter rather than secure detention (unless the youth is subject to secure detention based upon his or her prior criminal history).

Section 5

Amends s. 985.24, F.S., detention prohibitions, by prohibiting a youth 9 years of age or younger from being placed into secure detention unless the youth has been charged with a capital felony, a life felony, or a felony of the first degree. Furthermore, it prohibits a youth who is charged with misdemeanor domestic violence who also has a violent family history or who is a victim of abuse or neglect from being placed in secure detention, if the decision for such placement is mitigated by the youth's history of trauma. This prohibition does not apply if the youth is subject to secure detention because of his or her prior criminal history.

Section 6

Amends s. 985.245, F.S., the detention risk assessment instrument (RAI), to require that the RAI be developed by DJJ *in consultation with* representatives appointed by the statutorily enumerated 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 requires the RAI to accurately predict a child's risk of rearrest or failure to appear. It also removes "theft of a motor vehicle or possession of a stolen motor vehicle" as a factor that the RAI can consider.

Section 7

Amends s. 985.255, F. S., detention criteria, to specify that a youth charged with "felony" domestic violence, rather than "domestic violence," will be placed in secure detention. This change effectively eliminates youth charged with misdemeanor domestic violence from being placed in secure detention (except in those cases where there is no family violence or abuse history or the youth's own criminal history record warrants such secure detention placement).

Section 8

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., and the DJJ must adopt rules to govern such programs.

Section 9

Clarifies that youth participating in a work program or community service under s. 985.45, F.S., are employees of the state for workers compensation purposes. This is accomplished by deleting "liability" and replacing it with "chapter 440."

Section 10

Amends s. 985.632, F.S., relating to program review, quality assurance, cost-effectiveness, and reporting requirements. The bill consolidates three currently required annual reports into one comprehensive annual report, the Comprehensive Accountability Report (CAR), which will be

due to the Governor and Legislature by January 15 of each year. The CAR will include the following information:

- Program Accountability Measures (PAM) – a cost-effectiveness report for residential commitment programs.
- Outcome Evaluation (OE) – a report on program outputs and outcomes.
- Quality Assurance (QA) – a report evaluating the internal processes in programs to determine the level of performance and the quality of the services being provided.

Section 11

Provides an effective date of July 1, 2011.

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:

The DJJ reports that this bill will not have a fiscal impact.²⁰

The DCF reports that the fiscal impact of the Department of Juvenile Justice referring additional children to DCF for children's mental health services is anticipated to be minimal, since children within the target population are served within the limits of available funds.²¹

²⁰ *Id.*

²¹ Department of Children and Families, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Children, Families, and Elder Affairs Committee.

According to the Office of State Courts Administrator, the bill will not have a significant impact on judicial or court workload. The bill encourages the establishment and use of prearrest and postarrest diversion programs for first-time misdemeanants and children who are 9 years of age or younger. The increased use of prearrest and postarrest diversion programs for first-time misdemeanants and children who are 9 years of age or younger could potentially reduce the number of litigated cases and the number of court hearings in the juvenile justice system. The impact is indeterminate because the creation and use of such programs is encouraged and not mandated. Provisions of the bill may require some changes to the Florida Rules of Juvenile Procedure.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that if upon findings from a needs assessment, the child is found to be in need of mental health or substance abuse treatment services, DJJ will work with DCF and the child's parent or legal guardian to identify the most appropriate services and supports and available funding sources to meet the needs of the child. These supports include Medicaid, private insurance, private pay and children's mental health funds. According to DCF, most insurance-based resources will not pay for children identified "at-risk," because they require the child to have a mental health diagnosis. This will require careful consideration of the assessment and treatment needs of these children and an understanding of funding sources by those assisting the family.²³

The provisions of the bill may result in an increase in the number of children referred from DJJ to DCF for substance abuse and mental health services. Parents or guardians who choose to pursue services for their children and seek assistance to obtain them through Children's Mental Health general revenue funds may find very limited resources.²⁴

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

²² Office of the State Courts Administrator. Judicial Impact Statement, HB 1233. March 14, 2011.

²³ Department of Children and Families, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Children, Families, and Elder Affairs Committee.

²⁴ *Id.*