

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1084

SPONSOR: Senator Burt

SUBJECT: Children in Need of Services

DATE: March 3, 1999

REVISED: 03/11/99

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Whiddon</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/ 5 Amends.</u>
2.	<u></u>	<u></u>	<u>FP</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>

## I. Summary:

Senate Bill 1084 modifies current provisions governing the implementation of the physically-secure pilot program established to serve certain youth adjudicated as children in need of services (CINS youth). The bill modifies the eligibility criteria for placement in the physically-secure facility to more closely match legislative intent regarding services for CINS youth; expands the number of circuits covered by the pilot program from one circuit to five and designates the circuits; extends the allowable length of placement from 5 days for an initial placement and 15 days for subsequent placements to 90 days (with an additional 30 days authorized under specified circumstances); provides an opportunity for CINS youth in the circuits served by the physically-secure facility to waive the right to counsel; specifies the condition under which a youth would be transferred to the Department of Children and Family Services; and modifies the evaluation, monitoring, and reporting requirements for the Juvenile Justice Accountability Board and the Department of Juvenile Justice.

This bill substantially amends the following sections of the Florida Statutes: 984.225 and 984.226.

## II. Present Situation:

Under Florida law, status offenders are referred to as Children in Need of Services (or CINS youth) and are subject to the provisions of ch. 984, F.S. Included within the definition of "child in need of services" are youth who, in spite of reasonable efforts to remedy the situation, have persistently run away from home, are habitually truant from school, or are persistently disobedient *and* are not currently dependent, the subject of an abuse investigation, or currently adjudicated or alleged to be delinquent (s. 894.03[9], F.S., 1998 Supp.).

The Department of Juvenile Justice (DJJ or department) is responsible for providing an array of services to CINS youth and their families which the department implements statewide through contracts with 26 private provider agencies associated with the Florida Network of Youth and Family Services. The law specifies that "(i)t is the intent of the Legislature to address the

problems of families in need of services by providing them with an array of services designed to preserve the unity and integrity of the family and to emphasize parental responsibility for the behavior of their children (s. 984.04[1], F.S., 1998 Supp.).” Services provided by Network agencies include outreach and prevention; centralized intake; individual, group, and family counseling; and temporary residential services.

### **Physically-Secure Facility**

Providing for the physically-secure placement of youth who have not been charged with a criminal offense has been the subject of much debate over time. Opponents maintain that physically detaining non-delinquent youth is overly-severe and could be counterproductive to the goal of preventing more serious behaviors. Proponents believe that some status offenders, particularly chronic runaways, are so self-destructive and intent on resisting help that the only way to intervene on their behalf is to physically detain them.

In an attempt to address the needs of particularly troubled youth and families for whom traditional services are unsuccessful, the 1997 Legislature augmented the existing array of services for this population with a longer term, staff-secure residential placement (available statewide for CINS youth who are chronic runaways or who have been “locked out” of their homes) and with a physically-secure placement, established as a pilot program in the Seventh Judicial Circuit (Flagler, Putnam, St. Johns, and Volusia Counties). The physically-secure program in Volusia County, the Discovery Center, is being tested as an option of last resort for certain CINS youth for whom other interventions have failed.

The law authorizes the court to place a youth who has been adjudicated within the Seventh Circuit as a child in need of services (CINS) in the physically-secure facility if the child has run away from a staff-secure facility or has committed at least two prior acts of direct or indirect contempt. The law further provides that “while in the physically secure facility, the child shall receive appropriate assessment, treatment, and educational services that are designed to eliminate or reduce the child’s truant, ungovernable, or runaway behavior, (and) the child and family shall be provided with family counseling and other support services necessary for reunification” (s. 984.226[2], F.S., 1998 Supp.). Length of stay is limited to 5 days for a first placement and 15 days for subsequent placements.

Following passage of the legislation authorizing the physically-secure pilot, the Department of Juvenile Justice selected the provider through a competitive procurement process; the contract was awarded to the ACT Corporation of Volusia County. The facility began operation in August, 1998, and since that time, five youth have been placed there; one has been placed twice. All youth have been placed for the maximum number of days allowed under current law, and the discharge destination for all of the youth has been to their homes.

The department’s contract with ACT Corporation provides for DJJ to pay a fixed price of \$90.98 per day for 15 beds, whether or not the beds are filled, and to pay \$90.98 for up to 15 additional beds, if utilized. To date, the department has expended \$317,975 for the facility. The total budget for this contract is \$996,231.

### **Due Process Requirement**

Detaining a non-delinquent youth in a physically-secure setting requires strict compliance with a number of federally-prescribed protections, including due process protections which must be assured at each step in the CINS process, not just at the end of the continuum when a youth is subject to being placed in the physically-secure facility. Federal law specifies that CINS youth have “the *right* to legal counsel (42 U.S.C. 5601)” while current state law provides that “the child *must be represented* by counsel at each court appearance (s. 984.226[2], F.S., 1998 Supp.).” The department reports that all affected youth in the Seventh Circuit have been provided the *right* to counsel, pursuant to federal law, but that waiver of those rights has been allowed based on the courts’ judgement, which appears to conflict with state law.

### **Required Evaluation**

Section 984.226 (6), F.S., 1998 Supp., directs the Juvenile Justice Advisory Board (now called the Juvenile Justice Accountability Board or JJAB) to monitor the operation of the pilot program and to issue a preliminary report to the Legislature by December 1, 1998, and a final report jointly with DJJ by December 1, 1999. Although the facility had only been operational a short time and had had only three youth placed at the time the evaluation was conducted, the JJAB issued its preliminary report. Among the findings were these:

- “Five and fifteen day lengths of stay are not sufficient for effective planning to occur and therapeutic intervention to begin -- and it is not long enough to start any meaningful work with the family and youth relationships that will need to be the focus of their work.”
- “The CINS caseloads . . . suggest that too few youth will be so troublesome as to require placement in the physically secure shelter in numbers sufficient to fill the current facility, even to its minimum of 15 available beds.”

### **III. Effect of Proposed Changes:**

Senate Bill 1084 provides for the following modifications to the law governing the physically-secure pilot program:

- **The criteria for placement are modified.** An adjudicated CINS youth could be placed by the court in the physically-secure facility if he/she fails to appear for placement in the 90-day staff-secure shelter under s. 984.225, F.S., 1998 Supp.; or fails to comply with any other provision of a valid court order relating to such placement and, as a result, is found to be in direct or indirect contempt of court; or runs from such staff-secure shelter following placement.

This modification makes placement in the physically-secure facility more clearly a placement of last resort, applying only when the less restrictive residential placement has failed, which is more consistent with the stated intent of the Legislature relating to services for CINS youth.

- **The geographic boundaries are broadened.** Youth who are adjudicated CINS youth in the Third, Fourth, Fifth, Seventh, and Eighth Judicial Circuits would be eligible for placement in the physically-secure facility, rather than youth only in the Seventh Circuit.

Based on utilization thus far, the need to expand the number of circuits eligible to use this facility is clear, and the proposed expansion of the number of circuits should result in a truer test of the pilot program. However, the emphasis on family involvement and family reunification makes it imperative that the expansion not make it overly difficult for families to travel to the facility to take part in counseling and other activities with their children. Among the four additional circuits proposed, the Third Circuit appears to be the most problematic for travel with an average distance of 157 miles from the circuit's seven county seats to the facility.

- **The allowable length of placement is extended.** Instead of the current 5 day limit on an initial placement and 15 day limit on subsequent placements, the court would be able to place youth in the facility for up to 90 days (or 120 days under certain circumstances). The court is directed to review the child's placement once every 45 days, and DJJ or its representative is authorized to advise the court at any time that a youth is ready to go home or is unlikely to benefit from continued placement in the facility.

The longer placement would allow the statutory requirement for appropriate treatment and educational services to be met. The Department of Juvenile Justice reports that the facility's therapeutic programs are excellent.

According to SB 1084, utilization of the physically-secure facility is limited to youth who have previously been ordered to a staff-secure bed in one of the covered circuits. Based on the number and the utilization of staff-secure beds in the five circuits specified in the bill, on the percentage of youth ordered to those beds who meet the other criteria for placement in the physically-secure facility, and on a projected length of stay of 90 days, it is projected that 34 youth would be placed in the facility in FY 1999-2000. Full utilization for 15 beds would be 60 youth.

- **Other major provisions:**
  - › The current requirement that all CINS youth in the circuits served by the physically-secure facility be represented by counsel at each court appearance is modified to allow the youth to waive his/her right to counsel if it can be demonstrated to the court by clear and convincing evidence that the child knowingly and intelligently made the decision to waive.
  - › The court is directed to determine whether a youth's parent has reasonably participated in and financially contributed to the youth's counseling and treatment program and whether DJJ's efforts to reunite the family have been reasonable; and if the court finds inadequate support or participation by the parent, the court is to direct that the child be handled as a dependent child and transfer jurisdiction of the youth to the Department of Children and Family Services.

- › The Juvenile Justice Accountability Board is directed to submit another preliminary report on the implementation and operation of the pilot program to the Legislature by July 1, 1999, and to submit a report on the pilot's effectiveness by January 15, 2000. The Department of Juvenile Justice is directed to submit to the Legislature and the JJAB a report describing departmental efforts to implement the pilot project.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Current law provides for an indigent child to be appointed an attorney as provided under s. 985.203, F.S., 1998 Supp. The bill's addition of four circuits in which the requirement that CINS youth be afforded the right to counsel would likely impact the counties included in those four circuits.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The expansion of the geographic region from which the pilot program for a physically-secure facility may draw will increase transportation costs of the Department of Juvenile Justice. Additionally, the Department of Juvenile Justice estimates that increasing the pool of youth eligible for placement in the physically-secure facility will increase their need for attorney representation at CINS/FINS proceedings. The annual cost for transportation and legal representation is estimated at approximately \$100,000 annually. Since the department is fully funded for 30 beds and has an occupancy rate of less than 20 percent, these costs can be absorbed within current resources in FY 1999-2000. However, to the extent the pilot is successful, additional funding may be necessary in future years.

Current law provides for an indigent child to be appointed an attorney as provided under s. 985.203, F.S., 1998 Supp. The bill's addition of four circuits in which the requirement that CINS youth be afforded the right to counsel would likely impact the counties included in those four circuits.

**VI. Technical Deficiencies:**

The bill's modification of s. 984.226(1), F.S., 1998 Supp., makes it unclear whether one physically-secure facility is established or one facility within each of the five circuits.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Children and Families

Clarifies that the one physically-secure pilot program is established to serve the specified circuits as opposed to a program being established in each circuit.

#2 by Children and Families

Deletes the Third Circuit and adds the Ninth and Eighteenth Circuits to the list of circuits served by the physically-secure pilot program.

#3 by Children and Families

Deletes the Third Circuit and adds the Ninth and Eighteenth Circuits to the list of circuits in which the right to legal counsel must be provided to youth in the CINS/FINS system.

#4 by Children and Families

Corrects a reference.

#5 by Children and Families

Changes the date on which a report is due from the Department of Juvenile Justice from April 30, 1999 to August 1, 1999.