

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1718

SPONSOR: Criminal Justice Committee and Senator Smith

SUBJECT: Juvenile Justice

DATE: March 4, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable/CS
2.			CF	
3.			APJ	
4.			AP	
5.			RC	
6.				

I. Summary:

The CS would make the following changes in ch. 985, F.S., relating to juvenile delinquency and ch. 984, F.S., relating to children and families in need of services:

- Allows the court to order a juvenile to participate in a residential substance abuse or mental health treatment program as part of probation;
- Prescribes timelines for completing the comprehensive evaluation of juveniles for whom residential commitment is contemplated;
- Requires the court to order a predisposition report on all juveniles who have been found to have committed a delinquent act;
- Requires the DJJ to report to the Legislature on the recommendations for services and the placement of juveniles following the required comprehensive evaluations;
- Establishes protocols for conducting assessments and evaluations;
- Clarifies that the general jurisdiction of the court over a juvenile is until a juvenile's 19th birthday, with certain exceptions;
- Authorizes secure detention for juveniles charged with committing an act of terrorism;
- Adds to the detention eligibility criteria a child found by the court to be a clear and present danger to himself or the community (this new provision relating to detention eligibility would expire on October 1, 2004);

- Requires the Juvenile Justice Estimating Conference to report to the Legislature by October 1, 2003, about the effect of this provision on the number of juveniles who are being held in detention;
- Changes the requirement to report a juvenile's progress to the court from every 30 days to quarterly, unless the court requests otherwise;
- Requires the DJJ to adopt a rule pursuant to ch.120, F.S., establishing a procedure to provide notice of policy changes that impact contracted delinquency services and programs;
- Removes a requirement for forwarding certain secure detention forms to the OPPAGA;
- Removes references to "home detention" and "staff secure shelters" and replaces them with "condition of confinement to a designated residence during designated hours" and "shelters"; and
- Deletes definitions that are not used elsewhere in ch. 985, F.S.

This CS substantially amends, creates, or repeals the following sections of the Florida Statutes: 984.03, 984.09, 984.05, 984.10, 984.12, 984.14, 984.15, 984.225, 984.226, 985.03, 985.201, 985.207, 985.2075, 985.213, 985.214, 985.215, 985.216, 985.229, 985.231, 985.2311, 985.228, 985.2312, 985.24, 985.308, 985.31, 985.313, 985.3141, 985.316, 985.404, 985.4045, 985.407, 316.635, 318.143, 39.0015, 216.136, 419.001, 744.309, 784.075, 960.001, 985.21, 985.311, and 790.22.

II. Present Situation:

Children and Families in Need of Services

Chapter 984, F.S., relates to children and families in need of services (CINS/FINS). A "child in need of services" is defined in s. 984.03(9), F.S., to mean 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 the Department of Juvenile Justice (DJJ) or the Department of Children and Family Services for an adjudication of dependency or delinquency, and for whom there has been a finding by the court that the child has:

- (a) 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. Reasonable efforts include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the DJJ or the Department of Children and Family Services;
- (b) Been habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation pursuant to ss. 232.17 and 232.19, F.S.,

and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the DJJ or the Department of Children and Family Services; or

- (c) Persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, 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. Reasonable efforts may include such things as good faith participation in family or individual counseling.

Pursuant to a hearing, the court may order a CINS youth be placed for up to 35 days in a temporary shelter if such placement is required because a parent, custodian, or guardian is unavailable to take immediate custody of the child; or shelter placement is needed in order to provide an opportunity for the child and family to agree upon conditions for the child's return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an agreement.

If a child is formally adjudicated as a child in need of services (CINS), the court may order such child be placed for up to 90 days in a staff-secure shelter if:

- (a) The child's parent, guardian, or legal custodian refuses to provide food, clothing, shelter, and necessary parental support for the child and the refusal is a direct result of an established pattern of significant disruptive behavior of the child in the home of the parent, guardian, or legal custodian;
- (b) The child refuses to remain under the reasonable care and custody of his or her parent, guardian, or legal custodian, as evidenced by repeatedly running away and failing to comply with a court order; or
- (c) The child has failed to successfully complete an alternative treatment program or to comply with a court-ordered sanction and the child has been placed in a residential program on at least one prior occasion pursuant to a court order under this chapter.

Funding for these shelters was reduced by \$3.6 million in Special Session C, according to the DJJ.

Jurisdiction

Generally, the jurisdiction of the court over a juvenile does not extend beyond the juvenile's 19th birthday, except in circumstances expressly described in statute. Section 985.201, F.S., outlines the jurisdictional authority of the court over juveniles. Additionally, there are provisions relating to the jurisdiction of the court contained in ss. 985.231, 985.31, and 985.313, F.S. Generally, these other jurisdictional provisions restate the jurisdiction of the court as contained in s. 985.201, F.S. However, there appears to be a conflict between s. 985.201, F.S., and s. 985.231, F.S., as to whether the general jurisdiction of the court extends to the juvenile's 19th birthday or the juvenile's 21st birthday.

Detention

Presently, ss. 984.03 and 985.03, F.S., provide identical definitions for the term “detention care,” which is defined to include not only the temporary care of a juvenile in a state-operated secure detention facility, but the temporary care by the state in a child’s own home or in a nonsecure setting. The DJJ reports that nonsecure detention is seldom used and that the agency is not funded for this activity. These sections also provide identical definitions for the terms “detention center or facility” and “secure detention center or facility.”

The circumstances in which a juvenile may be taken into custody are described in s. 985.201, F.S. The parameters for the use of detention care, including the circumstances in which it is appropriate to hold a juvenile in secure detention, are outlined in ss. 985.213 and 985.215, F.S. Specific circumstances described in these sections limit the authority of both the DJJ and the court to place or hold a juvenile in any form of detention care. Additionally, s. 985.214, F.S., prohibits the use of detention care in certain circumstances.

Predisposition Reports

Section 985.229, F.S., describes the circumstances in which the court may order a predisposition report. A predisposition report is prepared by the DJJ, but may involve a multidisciplinary assessment of the juvenile’s needs. A predisposition report must be ordered in the case of a juvenile for whom residential placement is contemplated. A comprehensive evaluation of the juvenile’s physical health, mental health, substance abuse, and academic, educational, or vocational needs may be ordered in connection with the predisposition report.

Commitment

The court’s powers of disposition over a juvenile who has been adjudicated delinquent (including placing a juvenile on probation, committing the juvenile to a licensed child-caring agency or to the DJJ) are detailed in s. 985.231, F.S. This section has 3 subsections, 19 paragraphs, 42 subparagraphs, 4 sub-subparagraphs, and 4 sub-sub-subparagraphs. It is lengthy, cumbersome, and redundant in places.

Probation

The court may place a juvenile who has been adjudicated delinquent or who has had adjudication withheld in a probation program. Probation programs must include a penalty component and a rehabilitative component under s. 985.231, F.S. Section 985.228(4), F.S., governs the authority of the court to place juveniles for whom adjudication has been withheld into probation programs. Section 985.231(1)(a)1, F.S., governs the court’s probation authority of adjudicated juvenile delinquents.

Rule Making Authority

Chapter 120, F.S., prescribes the procedures for adopting rules under the Administrative Procedure Act. Section 985.405, F.S., authorizes the DJJ to adopt rules pursuant to ch. 120, F.S., implementing the provisions of ch. 985, F.S.

Reporting Requirement under s. 790.22, F.S.

Section 790.22, F.S., requires the DJJ to prepare a form for all minors charged with an offense that involves the use or possession of a firearm. The form must include the period of secure detention and relevant demographic information, including the sex, age, and race of the minor,

whether or not the minor was represented by private counsel or a public defender, the current offense, the minor's complete record, and any pending cases. The form is provided to the judge for consideration of whether the minor should be continued in secure detention. This statute also requires that this form be sent to the Office of Economic and Demographic Research (EDR), without client-identifying information. The EDR reports that it does not need these forms any longer because it collects the information another way.

III. Effect of Proposed Changes:

Children and Families in Need of Services

Sections 984.03, 984.05, 984.09, 984.10, 984.12, 984.14, 984.15, 984.225, and 984.226, F.S., would be amended to facilitate the ability of providers of services to CINS/FINS children and families to maximize the use of limited resources consistent with legislative objectives for these programs. (Funding for these shelters was reduced by \$3.6 million in Special Session C.)

The CS would delete references to "staff-secure shelters" and instead, it would reference to "shelters." These shelters would be allowed to keep children longer (45 days beyond the normally prescribed 35 days) in less restrictive settings while providing community overlay services. The CS would also limit case-staffing requirements and clarify the circumstances under which adjudication could occur. The CS would also clarify provisions relating to shelter placement as a sanction for contempt of court.

Jurisdiction

Section 985.201(4), F.S., would be amended to clarify that the general jurisdiction of the court over a juvenile does not extend beyond the juvenile's 19th birthday. Exceptions to this general jurisdiction would exist for juveniles in intensive residential treatment programs, serious or habitual juvenile offender programs, sex offender programs, and in high-risk or maximum-risk residential programs. The age of jurisdiction for these exceptions would be the juvenile's 21st birthday.

Detention

The CS would amend the definition of "detention care" provided in ss. 984.03(18) and 985.03(18), F.S. As amended, the definition of "detention care" would delete references to "nonsecure detention" and "home detention" and instead provide that "detention care" may include the supervision of the offender through the use of electronic monitoring in conjunction with a court-ordered condition of confinement to a designated residence during designated hours. Several other sections relating to detention would also be amended throughout the CS to conform with these changes.

Sections 985.213 and 985.215, F.S., would be amended to authorize placement in secure detention of a juvenile charged with an act of terrorism as defined in s. 775.30, F.S. The CS would also add to the detention eligibility criteria a child found by the court to be a clear and present danger to himself or the community. This new provision relating to detention eligibility would expire on October 1, 2004. The CS would also require the Juvenile Justice Estimating Conference to report to the Legislature by October 1, 2003, about the effect of this provision on the number of juveniles who are being held in detention.

The CS would also amend s. 985.216(2), F.S., which relates to the placement of juveniles in secure facilities as punishment for contempt of court. References to children in need of services would be deleted, as the court has jurisdiction over these youth pursuant to the provisions of ch. 984, F.S., rather than ch. 985, F.S. Conforming amendments would be made in ss. 316.635(4) and 318.143(2), F.S., relating to the power of the court to sanction contempt violations by minors charged with certain traffic offenses.

In addition, provisions relating to cost of care recovery for detention services would be moved into a new section, s. 985.24, F.S.

Predisposition Reports

Section 985.229, F.S., would be amended to allow the court to waive ordering a predisposition report, if the parties agree, and if one has been completed on the juvenile within the past year. (Currently, a predisposition report may include a comprehensive evaluation of the juvenile's physical health, mental health, substance abuse, and academic, educational, or vocational needs, if so ordered by the court.) If a comprehensive evaluation were ordered, the CS would require it to be completed within 20 days.

The CS would also require the court to order a predisposition report on all juveniles who have been found to have committed a delinquent act. The DJJ would be required to report to the Legislature on the recommendations for services and the placement of juveniles following these comprehensive evaluations.

In addition, the DJJ would be required to establish protocols for conducting these comprehensive evaluations. The protocols would prescribe the minimum qualifications of professionals performing the evaluations.

Commitment

Section 985.231, F.S., which currently details the court's powers of disposition, would be substantially amended in an effort to clarify its provisions. This section would still allow the court to place a juvenile in a probation program, commit the juvenile to a licensed child-caring agency, or commit the juvenile to the DJJ (as is currently provided under this section).

The specifics of these options, however, would no longer be contained in this section of law, but rather, under the CS, would be placed in their own newly created sections. All of the options currently available to the court under s. 985.231, F.S., would be retained in the new sections (s. 985.2311, F.S., would contain probation provisions, and s. 985.2312, F.S., would contain commitment provisions.)

In addition, the CS would change the requirement to report a committed juvenile's progress to the court from every 30 days to quarterly, unless the court requests these reports every 30 days.

Provisions relating to cost of care recovery for residential commitment would also be moved into a new section, s. 985.24, F.S., under the CS.

Provisions relating to juvenile sex offenders would also be moved from this section into another section of law, s. 985.308, F.S., which provides for juvenile sex offender commitment programs.

The CS would also amend s. 985.4045, F.S., relating to sexual misconduct by employees of the department or any contracted program, to provide for a definition of “juvenile offender.”

Probation

The CS would create a new section, s. 985.2311, F.S., relating only to probation. All of the current probation options available to the court would continue to be available to the court, including the following:

- a penalty component including, but not limited to, restitution, community service, curfew, or revocation or suspension of driving privilege;
- a rehabilitation component including, but not limited to, substance abuse treatment, mental health treatment, or school or other educational program attendance;
- an opportunity for random testing for purposes of detecting and monitoring the presence of alcohol or controlled substance, as appropriate;
- a requirement that parent or legal guardians participate in family counseling as necessary for rehabilitation of the offender; and
- a requirement that parent or legal guardians participate with the offender in fulfilling a court-imposed sanction.

The CS would also allow the court to order a juvenile to participate in a residential substance abuse or mental health treatment program as part of the rehabilitation component of probation.

In addition, the CS would delete references to “postcommitment probation” and would clarify whether this reference is to conditional release supervision or to probation.

Rule Making Authority

The CS would amend s. 985.407, F.S., to require the DJJ to adopt a rule pursuant to ch.120, F.S., establishing a procedure to provide notice of policy changes that impact contracted delinquency services and programs. A policy would be defined under the CS to be an operational requirement applying to only the specified contracted delinquency service or program. The procedure would be required to include: public notice, opportunity for public comment, assessment of fiscal impact, and the DJJ response to comments received.

Reporting Requirement under s. 790.22, F.S.

The CS would remove a requirement for forwarding secure detention forms for juveniles charged with an offense involving the use of possession of a firearm to the EDR (the forms would still have to be completed for detention purposes.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

According to the DJJ, the CS will not have a fiscal impact upon the department, except possibly the provision about detaining juveniles charged with terrorism. The DJJ states there is no data available to estimate the impact of this provision; however, any impact is expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DJJ created a Classification and Placement Work Group in 2000 to develop recommendations regarding the appropriate recommendation and placement of delinquent juveniles. This work group recommended a realignment of commitment programs based on the physical security of the facility to assist judges in selecting appropriate placements.

The work group also recommended specific requirements relating to the assessment and evaluation of juveniles and use of this information in preliminary disposition reports for juveniles under consideration for commitment. The Legislature continued the work group for the purposes of developing an assessment instrument and pursuing validation of that instrument.

In September of 2001, the Classification and Placement Work Group recommended the following legislative changes: authorizing judges to order juveniles into a residential substance abuse program as part of a probation order; prescribing timelines for completion of the comprehensive evaluation for juveniles for whom residential commitment is contemplated; and authorizing temporary release or home visits of less than three days without specific approval from a judge. The CS contains the first two recommendations.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
