

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 529                      Juvenile Defendants  
**SPONSOR(S):** Meadows  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 526

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Juvenile Justice Committee</u>	_____	White	White
2) <u>Judiciary Committee</u>	_____	_____	_____
3) <u>Criminal Justice Appropriations Committee</u>	_____	_____	_____
4) <u>Justice Council</u>	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill expands current law's authorization for a public defender to represent an indigent juvenile who is alleged to be delinquent pursuant to a petition to also authorize a public defender to represent an indigent juvenile during delinquency court proceedings: (1) that occur after the juvenile is taken into custody, but before the delinquency petition is filed, e.g., a detention hearing; and (2) that are unrelated to the defense of a delinquency petition, e.g., a temporary release or transfer hearing.

The bill also provides that a parent or a legal guardian, who is the victim in his or her child's case, may not be ordered by a court to obtain private counsel for the child and may not be held liable for the fees, charges, or costs of court-appointed counsel; whereas, under current law, the status of a parent or legal guardian as a victim is not considered and such parent or legal guardian may be court-ordered to obtain private counsel and/or held liable for the fees, charges, or costs of court-appointed counsel.

Finally, the bill expands the statutory requirements applicable to a juvenile's waiver of his or her right to counsel in delinquency court proceedings. Currently, statute requires: (a) a juvenile to be advised by the court of his or her right to court-appointed counsel each time he or she appears without counsel; and (b) the court to make findings that any waiver of that right by a juvenile has been freely, knowingly, and voluntarily made. The bill expands these requirements to also require a juvenile to have had a meaningful opportunity to confer with counsel prior to waiving his or her right to counsel and authorizes a public defender to be appointed for an indigent or nonindigent juvenile for purposes of providing that meaningful opportunity. This portion of the bill implements a policy recommendation suggested by the Florida Supreme Court in January 2005. See Section I, "Effect of Proposed Changes" and Section III., "Constitutional Issues," *infra*.

The Public Defender Association has indicated that the fiscal impact of this bill is indeterminate, but may be substantial in some circuits.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill increases the responsibilities of public defenders by: (a) expanding the types of delinquency court proceedings in which a public defender is authorized to represent an indigent juvenile; (b) expanding the circumstances under which a court may appoint counsel for an indigent juvenile, i.e., when the parent or legal guardian is a victim; and (c) requiring that a juvenile have first conferred with counsel prior to waiving his or her right to counsel.

**Safeguard individual liberty:** The bill expands the types of delinquency proceedings in which an indigent juvenile may be represented by a public defender and increases the likelihood that juveniles will not waive counsel in delinquency proceedings by requiring them to have had a meaningful opportunity to confer with counsel prior to such waiver.

**Empower families:** The bill provides that a parent or a legal guardian, who is the victim in his or her child's case, may not be ordered by a court to obtain private counsel for the child and may not be held liable for the fees, charges, or costs of court-appointed counsel for the child.

#### B. EFFECT OF PROPOSED CHANGES:

**Representation of Juveniles by Public Defenders:** Section 27.51(1)(c), F.S., currently authorizes a public defender to represent an indigent juvenile who is alleged to be delinquent pursuant to a petition filed before a circuit court. Such counsel must be appointed by the court when the indigent juvenile's: (a) parents or legal guardian are also indigent and unable to employ counsel;<sup>1</sup> or (b) parents or legal guardian are not indigent, but refuse to employ counsel for the juvenile.<sup>2</sup> Notwithstanding indigent status, the parents or legal guardian of a juvenile are responsible for fees, charges, and costs of court-appointed counsel.<sup>3</sup>

*Effect of the bill: The bill amends s. 27.51(1)(c), F.S. to repeal current law that limits public defender representation to when an indigent juvenile is alleged to be delinquent pursuant to a petition. Under the bill, the public defender is authorized to represent an indigent juvenile who is either:*

- (1) In custody for a felony, misdemeanor, or criminal contempt; or*
- (2) Facing delinquency proceedings under ch. 985, F.S., before a circuit court.*

*Thus, under the bill, the public defender remains authorized, as in current law, to defend an indigent juvenile against a petition of delinquency; however, the bill expands this authority to also permit public defender representation of an indigent juvenile during delinquency court proceedings: (1) that occur after custody, but before the delinquency petition is filed, e.g., a detention hearing; and (2) that are unrelated to the defense of a petition of delinquency, e.g., a temporary release<sup>4</sup> or transfer hearing.<sup>5</sup>*

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<sup>1</sup> Section 985.203(1), F.S.

<sup>2</sup> In delinquency proceedings, the court is required to order the non-indigent parents or legal guardian of a juvenile to obtain private counsel. The willful failure of the parents or legal guardian to comply with that order is punishable by contempt of court proceedings. Section 985.203(2) and (3), F.S.

<sup>3</sup> Section 27.52(6), F.S.

<sup>4</sup> Under ss. 985.03(57) and 985.231(1)(d), F.S., a juvenile may be temporarily released with court approval from a moderate-, high-, or maximum-risk commitment program.

<sup>5</sup> Under s. 985.404(4), F.S., the Department of Juvenile Justice may transfer a committed juvenile to another program. If the transfer is to a program within a restrictiveness level that is higher or lower than the court-ordered restrictiveness level, the Department must notify the court that committed the juvenile. The court may set a hearing to review the transfer; however, if no such hearing is set within 10 days after receipt of the notice by the court, the transfer is deemed granted.

*Additionally, the bill amends s. 985.203(2), F.S., to require the court to appoint counsel for an indigent juvenile if his or her parent or legal guardian is the alleged victim in the case and does not obtain private counsel for the juvenile. The bill specifies that the parent or legal guardian may not be held liable for the fees, charges, or costs of court-appointed counsel if the court finds at disposition that the parent or legal guardian is a victim of the offense.*

**Juvenile Right to Counsel:** In 1967, the United States Supreme Court held that juveniles are constitutionally entitled to counsel in delinquency cases.<sup>6</sup> Currently, this right is protected by s. 985.203(1), F.S., which provides that a juvenile must be represented by legal counsel at all stages of delinquency court proceedings, unless the right to counsel is freely, knowingly, and intelligently waived after the court has advised the juvenile of his or her right to court-appointed counsel. Additionally, under the subsection, after a juvenile has waived the right to counsel, the court must renew the offer of court-appointed counsel at each subsequent proceeding where the juvenile appears without counsel. Florida courts have held that the failure of a circuit court to renew the offer of court-appointed counsel constitutes fundamental error requiring reversal.<sup>7</sup>

F.R.J.P. 8.165 further specifies that any waiver of a juvenile's right to counsel must be in accordance with the following requirements: (a) the court must thoroughly inquire into the child's comprehension of the offer of counsel and into the child's capacity to make his or her choice intelligently and understandingly;<sup>8</sup> (b) the waiver must be in writing; and (c) if the waiver is occurring at a plea or adjudicatory proceeding, the written waiver must be signed by a parent, guardian, responsible adult relative, or a court-assigned attorney, who shall verify that the juvenile's waiver appears knowing and voluntary.

Requirements (b) and (c) outlined above were added to F.R.J.P. 8.165 by the Florida Supreme Court in 2005, based upon recommendations made by the Florida Bar Commission on the Legal Needs of Children (the Commission) and the Juvenile Court Rules Committee.<sup>9</sup> A third recommendation was also considered by the Court, which would have amended the rule to require that juveniles be provided with a meaningful opportunity to confer with an attorney before waiving counsel.<sup>10</sup> According to the Court, this amendment would be, ". . . an important additional safeguard designed to protect a juvenile's constitutional right to counsel . . ."<sup>11</sup> However, the Court declined to adopt the amendment due to its potential fiscal impact<sup>12</sup> and instead invited the Legislature to address this issue.<sup>13</sup> The Court stated:

Because of . . . our desire to work cooperatively with the Legislature, we urge the Legislature to consider the Commission's recommendations. We also strongly urge that the voluntary practice that exists in many jurisdictions in which consultation with an attorney takes place be continued and, where possible, expanded in the interim.

<sup>6</sup> *In re Gault*, 387 U.S. 1, 36-37 (1967).

<sup>7</sup> See *A.L. v. State*, App. 4 Dist., 841 So.2d 676 (2003)(holding that a court's failure to offer juvenile appointed counsel at all stages of delinquency proceedings was fundamental error requiring remand for new disposition hearing, even though juvenile had waived counsel at an earlier proceeding).

<sup>8</sup> With regard to the requirement of a thorough inquiry, the Florida Supreme Court has stated, "The 'requirement of a detailed inquiry recognizes that '[i]t is extremely doubtful that any child of limited experience can possibly comprehend the importance of counsel.'" *P.L.S. v. State*, 745 So.2d 555, 557 (Fla. 4th DCA 1999) (quoting *G.L.D. v. State*, 442 So.2d 401, 404 (Fla. 2d DCA 1983)). Although the inquiry for juveniles must be at least equal to that accorded adults, courts should be even more careful when accepting a waiver of counsel from juveniles. See *K.M. v. State*, 448 So.2d 1124, 1125 (Fla. 2d DCA 1984)." *State v. T.G.*, 800 So.2d 204, 210-211 (Fla. 2001).

<sup>9</sup> *Amendments to the Florida Rules of Juvenile Procedure*, 894 So.2d 875, 877, 880-881 (Fla. 2005).

<sup>10</sup> *Amendments to the Florida Rules of Juvenile Procedure*, 894 So.2d at 881.

<sup>11</sup> *Id.* at 880.

<sup>12</sup> Regarding fiscal impact, the Court stated, "Although the public defenders stated that they do not anticipate a direct fiscal impact because in many circuits these procedures [pre-waiver consultation with an attorney] are already being followed, supplemental comments filed by the FPDA indicate that at least two circuits, the Sixth and Twelfth, may experience a significant fiscal impact, including the need for additional employees, should rule 8.165 be amended as proposed." *Id.* at 878.

<sup>13</sup> *Id.* at 880-881.

We thus decline to adopt at this time the portion of rule 8.165(a) regarding consultation with an attorney prior to a waiver. We emphasize that we are not rejecting this proposed amendment to rule 8.165(a), but are merely deferring its consideration. We intend to readdress the adoption of the amendment to rule 8.165(a) at a future time following the conclusion of the legislative session.<sup>14</sup>

During the 2005 Regular Session, legislation was filed in the Senate, which would have amended s. 985.203(1), F.S., to require that a juvenile be provided with a meaningful opportunity to confer with counsel prior to waiver.<sup>15</sup> The bill had no House companion and it ultimately died in the Senate Judiciary Committee.

To date, the Florida Supreme Court has not readdressed this issue.

*Effect of the bill: As discussed above, s. 985.203(1), F.S., currently requires: (a) a juvenile to be advised by the court of his or her right to court-appointed counsel each time he or she appears without counsel; and (b) the court to make findings that a waiver of that right by a juvenile has been freely, knowingly, and voluntarily made. The bill expands these statutory requirements by amending s. 985.203(1), F.S., to also require a juvenile to have had a meaningful opportunity to confer with counsel prior to waiver of the right to counsel. Additionally, the bill amends s. 27.51(2), F.S., to permit a public defender to be appointed by the court to provide an indigent or nonindigent juvenile with the meaningful opportunity to confer with counsel prior to waiver.*

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 27.51(1)(c) and (2), F.S., to: authorize a public defender to represent an indigent child who is: (a) taken into custody for a felony, misdemeanor, or criminal contempt or (b) facing delinquency proceedings under ch. 985, F.S., before a circuit court; and provide that a court may appoint the public defender for an indigent or nonindigent juvenile as provided in s. 985.203, F.S.

**Section 2.** Amends s. 985.203(1) and (2), F.S., to: require that a juvenile be provided with a meaningful opportunity to confer with counsel prior to waiver of the right to counsel; and provide that a parent or a legal guardian, who is the victim in his or her child's case, may not be ordered by a court to obtain private counsel for the child and may not be held liable for the fees, charges, or costs of court-appointed counsel for the child.

**Section 3.** Provides an effective date July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill expands the responsibilities of public defenders by authorizing their representation:

- (1) For purposes of providing a meaningful opportunity to confer with counsel prior to waiver of counsel by an indigent or nonindigent juvenile;
- (2) During delinquency court proceedings that occur after an indigent juvenile is taken into custody, but before the delinquency petition is filed, e.g., a detention hearing; and

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<sup>14</sup> *Id.* at 881.

<sup>15</sup> CS/SB 1218 (2005).

- (3) During delinquency court proceedings that are unrelated to the defense of a delinquency petition filed against an indigent juvenile, e.g., a temporary release or transfer hearing.

The fiscal impact of the above-described expansion of duties will be minimal according to the Public Defender Association (the Association). With regard to the responsibilities listed in (1) and (2), the Association indicates that it is currently common practice for public defenders to represent juveniles during pre-petition delinquency court proceedings and for public defenders to advise juveniles of their rights prior to waiver of the right to counsel; however, the Association notes that up to three full-time positions may be required for smaller counties that do not have multiple public defenders. With regard to the responsibility listed in (3), the Association again anticipates a minimal fiscal impact because few delinquency court proceedings that are unrelated to the defense of a petition occur.

The fiscal impact of the bill, however, that the Association cannot determine is if more juveniles, after the meaningful conference with counsel, choose not to waive their rights to counsel. The Association states, "There are circuits in which this could have a substantial fiscal impact while in others it would have no impact. In the large circuits, the 4<sup>th</sup>-Jacksonville, 11<sup>th</sup>-Miami, 13<sup>th</sup>-Tampa, and the 17<sup>th</sup>-Broward, there would be no impact because the procedure in those circuits is to appoint the public defender to virtually all indigent children. The other circuits that follow different procedures could see a significant increase in caseloads."<sup>16</sup>

Finally, the fiscal impact of the bill's provision that a parent or legal guardian, who is the victim in his or her child's case, may not be ordered by a court to obtain private counsel for the child and may not be held liable for the fees, charges, or costs of court-appointed counsel for the child is indeterminate. Representatives of the Department of Juvenile Justice indicate that reliable statistics regarding the number of delinquency cases in which a parent or legal guardian is the victim are unavailable.<sup>17</sup> Staff has contacted the Justice Administrative Commission to obtain data regarding the amount of fees, charges, or costs of court-appointed counsel, which have been historically collected to provide some information regarding the bill's fiscal impact on this issue.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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<sup>16</sup> Letter from the Florida Public Defender Association dated March 30, 2005.

<sup>17</sup> The data collected by the Juvenile Justice Information System includes a field in which the relationship of the victim to the delinquent should be indicated; however, representatives of the Department of Juvenile Justice state that this field is often not marked. Further, a second field indicates the victim's relationship to the defendant in domestic violence cases; however, this bill impacts parents and legal guardians who are victims of any crime, not only domestic violence, and further, this data field is not limited to parents or legal guardians, i.e., the field could include siblings and other relatives who are not impacted by the bill.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

As discussed *supra*, the Florida Supreme Court in a 2005 opinion considered whether to amend F.R.C.P. 8.165 to require that juveniles have had a meaningful opportunity to confer with an attorney prior to waiving the right to counsel.<sup>18</sup> The Court stated that this requirement would be, “. . . an important additional safeguard designed to protect a juvenile’s constitutional right to counsel . . .,” and invited the Legislature to address this issue.<sup>19</sup> The Court did not hold, however, that such a requirement is constitutionally required to protect a juvenile’s right to counsel. Accordingly, the bill’s amendment to s. 985.203(1), F.S., which creates a juvenile right to a prewaiver consultation, appears to constitute a policy decision within the prerogative of the Legislature to expand the substantive, statutory protections of the juvenile right to counsel beyond those constitutionally required by Florida courts.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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<sup>18</sup> *Amendments to the Florida Rules of Juvenile Procedure*, 894 So.2d at 881.

<sup>19</sup> *Id.* at 880.