

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 Criminal Justice Committee

BILL: SB 1072

INTRODUCER: Senator Wise

SUBJECT: Juvenile Justice

DATE: March 10, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.			CF	
3.			JA	
4.			WPSC	
5.				
6.				

I. Summary:

Senate Bill 1072 makes changes to the juvenile justice chapter, along with conforming changes to a few other relevant statutes such as the “Children and Families in Need of Services” (CINS/FINS) statute and 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:

- 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;
- Provides changes to the “child in need of services” and “family in need of services” definitions to allow these youth to be served by the CINS/FINS network;
- 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 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;
- Adds two child advocates to the detention risk assessment instrument committee;

- 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 liability purposes;
- 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;
- Expands the number of additional members that may be added to a juvenile justice circuit board from three to five to adequately reflect the community diversity on the board; and
- Requires the DJJ to create the Disproportionate Minority Contact Task Force as a way to address minority overrepresentation in the juvenile justice system.

This bill substantially amends the following sections of the Florida Statutes: 394.492, 984.03, 984.14, 985.02, 985.03, 985.125, 985.145, 985.24, 985.245, 985.255, 985.441, 985.45, 985.632, 985.664, and creates an unnumbered section of law. The bill reenacts the following sections of the Florida Statutes: 419.001(1)(d), 984.04(5), 984.15(2)(c) and (3)(c), 984.13(3), and 419.001(1)(d).

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 2008-09, 85,377 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

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.

¹ Department of Juvenile Justice website, available at: <http://www.djj.state.fl.us/AboutDJJ/index.html> (last visited March 15, 2010).

² Florida Government Accountability Report, Department of Juvenile Justice, available at: <http://www.oppaga.state.fl.us/profiles/1073/> (last visited March 15, 2010).

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

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

CINS/FINS

Child In Need of Services (CINS): This is an adjudication status for 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 DJJ or DCF for an adjudication of dependency or delinquency. The court must also find the child:

- To have 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; or
- To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation pursuant to and through voluntary participation by the child's parents or legal custodians and by the child in family counseling services, and treatment offered; or
- To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodian, 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.⁵

In Fiscal Year 2008-09, there were 498 individual youth, ages nine and younger, that were referred to DJJ.⁶

Families In Need of Services (FINS): A family that has a child for whom there is no pending investigation of abuse, neglect, or abandonment or no court ordered supervision by DJJ or DCF for an adjudication of dependency or delinquency. The court must also find that the child has been:

- Running away; or
- Disobeying the reasonable and lawful demands of parents or legal guardian or custodian and being beyond their control; or
- Truant from school or engaging in other behavior that places the child at risk of future abuse, neglect, or abandonment, or at risk of entering the juvenile justice system.

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:⁷

- Restitution (payment) to the victim(s);
- Community service hours;

⁵ Sections 984.03, 985.03, F.S.

⁶ See Note 4 *supra*.

⁷ Department of Juvenile Justice, Probation and Community Intervention website, available at: <http://www.djj.state.fl.us/Probation/index.html> (last visited March 15, 2010).

- 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.

Detention Risk Assessment

Section 985.245, F.S., requires a detention risk assessment instrument 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 risk assessment instrument has been used since 1992, and it is in the process of being validated.⁸

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.⁹ Such youth is not eligible to be placed in a CINS/FINS shelter.¹⁰

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.¹¹

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

⁸ Department of Juvenile Justice, 2009 Legislative Session Bill Analysis SB 2128, on file with the committee.

⁹ Section 985.255(2), F.S.

¹⁰ Section 984.14, F.S.

¹¹ 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, 2010).

lead productive lives and successfully parent their children. The WINGS for Life program currently has the capacity to serve 20 women ages 14 – 19.¹²

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.¹³ The DJJ also publishes annually the Comprehensive Accountability Report (CAR).¹⁴

Juvenile Justice Boards and Councils

Section 985.664, F.S., authorizes the creation of a juvenile justice circuit board in each of the 20 judicial circuits and a juvenile justice county council in each of the 67 counties. Each county council appoints representatives to serve on the circuit board. The county councils and circuit boards serve as advisors to DJJ. Currently, the number of additional members that may be added to a juvenile justice circuit board to adequately reflect community diversity is three.

Disproportionate Minority Contact

Minority overrepresentation exists when the number of youth detained or confined in secure detention facilities, secure correctional facilities, or jails who are members of minority groups exceeds the proportion such groups represent in the general population. According to the Juvenile Justice Blueprint Commission, “the disproportionate representation of minorities exists for both males and females in Florida’s juvenile justice system...at every point in the juvenile justice system.”¹⁵ Continuing, “in nine of the 20 circuits, more than 40% of the youth referred...are black. In seven circuits, more than 60% of youth are black.”¹⁶

The department is implementing a coordinated Disproportionate Minority Contact (DMC) strategy through the creation of a DMC Task Force, which will work toward ensuring equal and fair treatment for every youth, regardless of their racial or ethnic background. The DMC Task Force consists of a volunteer group of juvenile justice stakeholders that will assist the department in bringing awareness and solutions to the issue of minority overrepresentation in the juvenile justice system.¹⁷

III. Effect of Proposed Changes:

Section 1.

Senate Bill 1072 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

¹² *Id.*

¹³ Section 985.632, F.S.

¹⁴ http://www.djj.state.fl.us/Research/CAR/CAR_2008/CAR_2008.html (last visited March 15, 2010).

¹⁵ Report of the Blueprint Commission, “*Getting Smart About Juvenile Justice in Florida*,” p. 46 (2008).

¹⁶ *Id.*

¹⁷ See Note 4 *supra*.

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.¹⁸

Section 2.

The bill amends the definition of "Child in need of services" and "family in need of services" in the CINS/FINS statute, s. 984.03(9), (25), F.S., to include youth who are nine years of age or younger who have a delinquency referral. As a result, these youth will be able to receive CINS/FINS services even though an active referral to DJJ exists.

Section 3.

The bill amends s. 984.14, F.S., shelter placement, by allowing 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 CINS/FINS shelter rather than secure detention (unless the youth is subject to secure detention based upon his or her prior criminal history).

Section 4.

The bill creates three new subsections under s. 985.02, F.S., providing legislative intent language for the juvenile justice system.

The newly created subsection (9) 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 (10) 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.

The new subsection (11) creates legislative intent language to ensure the juvenile justice system does not overrepresent any particular group of youth throughout the continuum of care.

Section 5.

The bill amends the definition of "child in need of services" and "family in need of services" in the delinquency statute, s. 985.03(7), (23), F.S., just as it does in the CINS/FINS statute, s. 984.03(9), (25), F.S. (See Section 2 above.)

Section 6.

The bill 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.

¹⁸ *Id.*

Section 7.

The bill 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 8.

The bill 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 9.

The bill amends s. 985.245, F.S., the detention risk assessment instrument, by revising the reviewing committee to include two new representatives from child advocacy organizations appointed by the DJJ Secretary.

Section 10.

The bill 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 11.

The bill 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 12.

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

Section 13.

The bill amends s. 985.632, F.S., quality assurance and cost-effectiveness, by consolidating three currently required annual reports into one comprehensive annual report, the CAR, which is due to the Governor and Legislature by January 15 of each year. The bill also deletes obsolete language to reflect current practices, according to the DJJ.

Section 14.

The bill amends s. 985.664, F.S., juvenile justice circuit boards and juvenile justice county councils, by expanding the number of additional members that may be added to the juvenile justice circuit boards from three to five to adequately reflect community diversity.

Section 15.

The bill creates a Disproportionate Minority Contact Task Force within the DJJ, comprised of 15 members, appointed by the Secretary of the DJJ. Members must represent educational institutions, law enforcement agencies, prosecutors, public defenders, the state court system, faith communities, juvenile justice service providers, and advocacy organizations. Numerous duties are specified, with the overriding goal of reducing disproportionate contact of minority juvenile offenders with the department and law enforcement agencies. The DJJ is required to staff the task force within existing resources. The task force must submit a report summarizing its activities and any legislative recommendations to the Secretary of the DJJ by July 1 of each year. The task force is abolished July 1, 2013.

Sections 16.-20.

These sections of the bill reenact specified sections of law for the technical purpose of incorporating the amendments into these statutes.

Section 21.

The bill provides an effective date of July 1, 2010.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.