

# 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: CS/CS/SB 1594

SPONSOR: Governmental Oversight & Productivity Committee and Criminal Justice Committee and Senator Campbell

SUBJECT: Juvenile Justice

DATE: April 7, 1999

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The committee substitute for committee substitute for Senate Bill 1594 amends numerous sections of ch. 985, F.S., and creates two new sections within the chapter for the purposes of:

- ◆ expanding the offenses listed in s. 435.04, F.S. (1998 Supp.), which preclude the employment of persons subject to level two employment screening;
- ◆ providing the Department of Juvenile Justice (DJJ) with the statutory authority to participate and expend funds in crime prevention;
- ◆ clarifying the law concerning the definition of aftercare, and the procedures to be followed in the event aftercare is violated by a juvenile;
- ◆ eliminating ambiguity in the section which currently requires the reporting of a student, who has a history of sexual behavior, to the school superintendent;
- ◆ providing officers, who have probable cause to believe that a juvenile is violating his home detention, with the authority to take the juvenile into custody;
- ◆ providing state law enforcement agencies with easier access to juvenile records;
- ◆ upgrading the DJJ's existing employee hiring standards;
- ◆ providing the DJJ with the statutory authority to form a direct support organization and to operate a welfare trust fund.

This committee substitute for committee substitute substantially amends sections 39.0132, 943.0515, 960.001, 984.03, 985.03, 985.04, 985.207, 985.208, 985.212, 985.231, 985.234, 985.316, 985.404, and 985.41, Florida Statutes.

The committee substitute for committee substitute creates sections 985.4145, 985.415, and 985.421, Florida Statutes.

## **II. Present Situation:**

### **Furlough**

The term “furlough” is repeatedly mentioned in ch. 985, F.S., but is not statutorily defined. According to the DJJ, this term is obsolete in the juvenile context because only adults are furloughed.

### **Level Two Employment Screening**

When hiring employees who will work with juveniles, the DJJ is required to use level two screening standards as provided for in s. 435.04, F.S. (1998 Supp.).<sup>1</sup> Level 2 screenings must include, but are not limited to, employment history checks, fingerprinting for all purposes and criminal history checks, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies. Security background investigations through level 2 screenings must ensure that no persons subject to undergoing such a screening has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any of the offenses delineated in s. 435.04(2), F.S. (1998 Supp.).

### **Criminal History Records of Minors**

Section 943.0515, F.S. (1998 Supp.), provides that the Criminal Justice Information Program (CJIP) shall retain the criminal history records of a minor, who is classified as a serious or habitual juvenile offender, for 5 years after the minor reaches 21 years of age. If a minor is not classified as a serious or habitual juvenile offender, the minor’s records shall be retained for five years after the minor reaches 19 years of age.

### **Crime Prevention**

The State’s Comprehensive Plan, as set forth in s. 187.201, F.S., was enacted in 1985 for the purpose of setting broad directional objectives for state agencies. Implementation of many of these objectives has been provided for in statute or by annual appropriations policies. For example, subsection (7) of the plan provides that it is a state objective to emphasize and protect the rights of crime victims. Implementation of this objective is provided for in s. 960.001, F.S.

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<sup>1</sup>Sections 39.001(2)(b) (1998 Supp.), and 985.01, Florida Statutes.

(1998 Supp.), which requires specified agencies involved in the justice system, including the DJJ, to develop and implement guidelines for the fair treatment of victims and witnesses.

Subsection (7) of the plan also provides that it is a state objective to increase crime prevention efforts to enhance the protection of individual personal safety and property. This subsection, however, does not indicate which state agencies are to be involved in crime prevention.

### **Aftercare Placement**

Pursuant to s. 985.316, F.S., *all* juveniles who are released from a residential commitment program *shall* be placed on aftercare. The term “aftercare” is not defined by statute, and due to the lack of a definition, it has been difficult for those implementing ch. 985, F.S., to know exactly what programs fall within the aftercare category. Generally, in practice, however, “aftercare” consists of non-commitment day treatment, re-entry, postcommitment community control (PCCC), and furlough programs, and either the DJJ or the trial court may order a juvenile’s placement in an aftercare program.<sup>2</sup>

In the event a juvenile violates any *aftercare* program, the state attorney must file a petition alleging the violation, and the case must be heard by the trial court.<sup>3</sup> If the court finds that a juvenile has violated his or her aftercare, the court may subject the juvenile to numerous statutorily defined sanctions, including placement of the juvenile on home detention with electronic monitoring.<sup>4</sup> As a result of this required violation procedure, the caseloads of juvenile state attorneys and trial courts have substantially increased throughout the state.

On the other hand, if a juvenile violates a *commitment* program, e.g., a non-aftercare program, the court need not become involved; instead, the DJJ may administratively transfer the juvenile to another commitment program.<sup>5</sup>

### **Sexual History Disclosure**

Under ss. 39.0132 and 985.04 (1998 Supp.), F.S., the DJJ is required to disclose to a school superintendent that a student who is under the supervision of the DJJ:

- ◆ has a known history of sexual behavior with other juveniles;
- ◆ is an alleged juvenile sex offender; or
- ◆ has pled to or been found guilty of sexual battery, prostitution, lewdness/indecent exposure, sexual performance by a child, or distributing obscene material to a minor.

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<sup>2</sup>Section 985.231, F.S. (1998 Supp.).

<sup>3</sup>Section 985.231, F.S. (1998 Supp.).

<sup>4</sup>Section 985.231, F.S. (1998 Supp.).

<sup>5</sup>Section 985.404, F.S. (1998 Supp.).

The phrase, “a known history of sexual behavior” is undefined and has resulted in confusing constructions. For example, a juvenile, whose past behavior consists only of innocuous acts such as kissing between consenting juveniles, could fall within the meaning of this vague phrase.

### **Taking a Child into Custody**

Pursuant to s. 985.207(1)(d), F.S. (1998 Supp.), a juvenile may be taken into custody when an officer has probable cause to believe that the juvenile is violating his community control or aftercare supervision. An officer, however, may not take a child into custody when he or she has probable cause to believe that a juvenile is violating his home detention. Instead, the officer must first obtain a pick up order for the juvenile.

### **Fingerprinting and Photographing of Juveniles**

Pursuant to s. 985.212, F.S., the fingerprints of a juvenile who is charged with a felony or certain enumerated misdemeanors, must be submitted to the Florida Department of Law Enforcement (FDLE). Furthermore, a law enforcement agency, in its discretion, may fingerprint and photograph a juvenile who is taken into custody based on probable cause that the juvenile committed any other violation of law. These discretionary records must not be made available for public disclosure, but can be made available to other law enforcement and criminal justice agencies, such as FDLE. The FDLE, however, is not statutorily authorized to thereafter release these records to other law enforcement and criminal justice agencies.

### **Sexual Abuse Intervention Networks**

Section 985.308, F.S., (1998 Supp.), provides that the DJJ, the Department of Legal Affairs, and the Department of Children and Family Services, may, when funds are specifically appropriated, award grants to sexual abuse intervention networks. The grants may be used for training, aftercare, evaluation, public awareness, and other needs identified by the network. Furthermore, the Department of Legal Affairs is given the authority to adopt rules governing the award of grants. In practicality, however, the DJJ manages the grant program without any oversight by or involvement with the Department of Legal Affairs.

### **Hiring Standards for DJJ Employees**

Section 985.406, F.S. (1998 Supp.), creates the DJJ Standards and Training Commission, which is required to establish a program for juvenile justice training. Specifically, the Commission must design and implement training programs for certain types of jobs in the DJJ. The program must include a curriculum based examination, and all DJJ program staff and providers who deliver direct care services must successfully complete the training.

Furthermore, s. 985.01, F.S., provides that the DJJ must use the level two screening standards provided for in ch. 435, F.S. Level two screening standards require a security background check which includes, but is not limited to, employment history checks, fingerprinting, statewide criminal and juvenile record history checks, and federal criminal record checks.

### **Direct-Support Organization**

The DJJ has had an ongoing partnership with the Florida Business Partners for Prevention (FBPP) since 1994. At present, the organization has no bylaws or articles of incorporation, but it desires to organize for the purpose of serving as an advisory and support group of the DJJ, with reciprocal staff provided by the DJJ. Moreover, the organization wishes to apply for incorporation as a non-profit charitable Direct Service Organization (DSO).

Florida law currently allows certain state entities to form DSOs. For example, ss. 240.331 and 240.299, F.S., provide that state colleges may have a DSO for the purpose of receiving, holding, investing and administering property, and of making expenditures to or for the benefit of a community college. The DSO is permitted to use the property, facilities, and personal services of the college, and to invest funds.<sup>6</sup> At the present time, however, the DJJ has no statutory authority to have a DSO.

### **Welfare Trust Fund**

Under s. 402.18, F.S., the Department of Health and Rehabilitative Services (HRS) is statutorily permitted to operate a welfare trust fund. All moneys from any auxiliary, canteen, welfare, donated, or similar fund under the jurisdiction of HRS are held in the trust fund. For example, HRS's receipts from the operation of vending machines, hobby shops, sheltered workshops, activity centers, and farming projects must be deposited in the trust fund. Likewise, the receipts of any sale of contraband found on a HRS client must be deposited in the trust fund.

HRS is permitted to invest the funds in the manner authorized by the law governing fiduciaries, and these investments may include, but are not limited to, savings accounts and a state share insurance program. HRS may spend the money for the benefit, education, and general welfare of HRS's clients. The statute does not limit what constitutes the general welfare. *Compare* s. 945.215, F.S. (requiring the Legislature to annually appropriate moneys held in the Department of Correction's Inmate Welfare Trust Fund).

The DJJ does not have specific statutory authority authorizing it to operate a welfare trust fund; however, the DJJ currently operates a welfare trust fund under the aforementioned statutory authority granted to HRS.

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

#### **Furlough**

The Committee substitute for committee substitute amends ch. 985, F.S., to delete references to the obsolete term "furlough."

#### **Level Two Employment Screening**

The Committee substitute for committee substitute amends s. 435.04(2), F.S. (1998 Supp.), by adding new offenses to those currently delineated in subsection 2, which preclude the employment

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<sup>6</sup>Section 944.802, F.S., authorizing the Department of Corrections to form a DSO.

of persons subject to level two employment screening. The newly added offenses are: battery on a detention or commitment facility staff; removing a child beyond state limits with a criminal intent pending custody proceeding or to avoid producing a child at a hearing or delivering a child to the designated person; exhibiting weapons within 1,000 feet of a school; possessing an electric weapon or device, destructive device, or other weapon on school property; resisting arrest with violence; depriving an officer of protection or communication; aiding in an escape; inflicting cruel treatment on an inmate resulting in great bodily harm; aiding an escaped prisoner; introducing contraband into a correctional or detention facility; and sexual misconduct in juvenile justice programs.

### **Criminal History Records of Minors**

The Committee substitute for committee substitute broadens s. 943.0515, F.S. (1998 Supp.), to also require the CJIP to retain criminal history records of minors, who are committed to a maximum-risk residential program, for five years after the minor reaches 21 years of age.

### **Crime Prevention**

The Committee substitute for committee substitute amends s. 960.001(1), F.S., to require specified agencies involved in the justice system, including the DJJ, to implement crime-prevention for the purpose of preventing crimes which create victims or which further harm former victims. Moreover, the committee substitute for committee substitute provides that the agencies may participate in and expend funds for crime prevention, public awareness, public participation, and educational activities.

### **Aftercare Programs**

The committee substitute for committee substitute amends ss. 984.03, 985.231 and 985.404, F.S. (1998 Supp.), and s. 985.316, F.S., for the purpose of creating a clear distinction between postcommitment non-residential aftercare programs and PCCC, both of which fall under the umbrella of aftercare programs. In so doing, the committee substitute for committee substitute affects the juvenile justice system in several ways.

First, the committee substitute for committee substitute eliminates the ambiguity which currently exists over the exact meaning of aftercare. Under the committee substitute for committee substitute, aftercare is clearly defined as programs, such as non-residential minimum risk, re-entry and PCCC, in which a juvenile may be placed after he or she has been released from a residential commitment.

Second, the committee substitute for committee substitute provides that aftercare is no longer mandatorily required for all juveniles released from residential commitment; instead, the DJJ, after conducting a needs assessment, will determine whether a juvenile should receive aftercare services. This provision may have the effect of lowering aftercare costs by targeting only those juveniles who truly need the services.

Third, the committee substitute for committee substitute provides that when a juvenile violates any aftercare program, other than PCCC, that the DJJ may administratively transfer the juvenile to

another commitment program without a court hearing. As a result, the backlog of aftercare violation cases in Florida state attorney's offices and trial courts may be reduced.

Fourth, the committee substitute for committee substitute provides that a trial court may no longer order any aftercare program. Instead, a trial court that wishes to insure that a juvenile is supervised after release from a residential commitment program, may order PCCC. By ordering PCCC, the trial court retains jurisdiction over the juvenile, and any violations of PCCC must be alleged in a petition and heard by the trial court. If the court finds that the juvenile has violated PCCC, the court may, in part, place the juvenile on home detention with electronic monitoring. Although current law does not specify the number of days that the juvenile may be on home detention for this offense, the committee substitute for committee substitute provides that the detention period may be up to five days for a first offense and up to 15 days for a second or subsequent violation.

### **Sexual History Disclosure**

The committee substitute for committee substitute amends ss. 39.0132 and 985.04, F.S., to provide that the DJJ need only disclose to a school superintendent that a student, under the DJJ's supervision, has a criminal history of sexual behavior with other juveniles. In so providing, the Committee substitute for committee substitute eliminates current law's ambiguity concerning exactly what type of sexual behavior with other juveniles triggers the disclosure requirement.

### **Taking a Child into Custody**

The committee substitute for committee substitute amends s. 985.207(1)(d), F.S. (1998 Supp.), to provide that an officer, who has probable cause to believe that the juvenile is violating his home detention, may take the juvenile into custody. This authority will enable officers to immediately respond to a home detention violation, rather than having to obtain a pick up order for the juvenile from the court.

### **Fingerprinting and Photographing of Juveniles**

The committee substitute for committee substitute amends s. 985.212(1)(b), F.S., to provide that FDLE may include a juvenile's record in its state criminal history database, thereby enabling other criminal justice agencies which are entitled to these records under existing law, to readily access these records without having to go through current law's cumbersome process of contacting the law enforcement agency which compiled the original record.

### **Sexual Abuse Intervention Networks**

The committee substitute for committee substitute amends s. 985.308, F.S., (1998 Supp.), for the purpose of deleting the Department of Legal Affairs' authority to promulgate rules for the implementation of the sexual abuse intervention network grant program. As a result, the DJJ, the agency which currently implements the program by itself, will be able to promulgate rules through its general rulemaking powers for the program.

### **Hiring Standards for DJJ Employees**

The committee substitute for committee substitute amends s. 985.406, F.S. (1998 Supp.), to provide that the training program developed by the DJJ Standards and Training Commission must be certifiable, and must include a competency, rather than a general curriculum, based examination. The DJJ employee must pass the competency exam.

The committee substitute for committee substitute further amends s. 985.406, F.S. (1998 Supp.), to provide criterion, in addition to that currently provided for in ch. 435's level two screening standards, which must be satisfied in order for a person to be hired as a DJJ program staff member or to be contracted with as a provider of direct-care services. In order for a person, who is hired after October 1, 1999, to be eligible he or she must:

- ◆ be at least 19 years old;
- ◆ be a high school graduate or its equivalent;
- ◆ not have been convicted of a felony or a misdemeanor involving perjury, or have been dishonorably discharged from the military;
- ◆ have abided by the fingerprinting and background investigations required in ch. 435;
- ◆ have submitted an affidavit attesting to the person's compliance with this section;  
and
- ◆ have completed any commission-approved basic training program offered by the DJJ.

The purpose of these changes is to bring juvenile justice training programs and personnel standards up to the same level as those in the FDLE and the Department of Corrections.

### **Direct-Support Organization**

The committee substitute for committee substitute creates s. 985.4145, F.S., to provide the DJJ with the statutory authority to have a DSO. Specifically, the committee substitute for committee substitute states that a DSO is an organization which is:

- ◆ a corporation not for profit incorporated under ch. 617 and approved by the Department of State;
- ◆ operated to conduct activities, raise funds, receive grants and bequests, invest in securities, funds, objects of value, or other property, and to make expenditures to or for the benefit of the DJJ, or a county or district board juvenile justice system; and
- ◆ determined by the DJJ to be consistent with the goals of juvenile justice.

Furthermore, the committee substitute for committee substitute contains numerous provisions that enure accountability of the DSO, such as, reporting requirements, a requirement that the DSO operate under contract, and the contents of the contract.

### **Welfare Trust Fund**

The committee substitute for committee substitute creates s. 985.421, F.S., for the purposes of providing the DJJ with the specific statutory authority to operate a welfare trust fund. The committee substitute for committee substitute provides that all moneys obtained by the DJJ from the operation of canteens, vending machines, hobby shops, activity centers, farming projects, and specified donations must be deposited in the trust fund. Likewise, the receipts of any sale of contraband found on a DJJ juvenile must be deposited in the trust fund.

The DJJ is permitted to invest the funds in the manner authorized by the law governing fiduciaries, and these investments may include, but are not limited to, savings accounts and a state share insurance program. The DJJ may spend the money for the benefit, education, and general welfare of DJJ's clients. Expenditures for the general welfare may include, but are not limited to, costs for maintaining canteens, hobby shops, recreational or entertainment facilities, activity centers, farming projects, behavior modification programs, and other similar facilities and programs.

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

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

None.

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

None.

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

Senate Bill 1648 creates the Juvenile Welfare Trust Fund, in compliance with Art. III, s. 19(f), State Constitution.

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

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

None.

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

None.

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

The committee substitute for committee substitute provides for improvements in the training and curriculum offered by the DJJ to its employees and to its direct care providers. The DJJ has also submitted a separate legislative budget request of \$16,454,700 for 1999-2000, of

\$5,301,000 for 2000-2001, and of \$5,301,00 for 2001-2002 in order to fund additional salary enhancements for its personnel.

The DJJ does not expect a negative fiscal impact to result from the committee substitute for committee substitute's other provisions. Specifically, the DJJ has explained that the provision which grants statutory authority to expend funds for crime prevention will have no effect because the DJJ currently provides prevention programming through its regular operating procedures. Moreover, the DJJ does not expect that the formation of the DSO for the FBPP will have a negative fiscal impact because the DJJ currently pays the salary for the FBPP administrator who is responsible for carrying out the activities of the FBPP.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

Section 3 of the committee substitute for committee substitute contains material similar to that in SB 138 passed by the Senate on March 24, 1999. Because the material and cross references are not identical, a deletion of this section may be warranted.

In a 1994 Senate committee report, *An Examination of Inmate Benefits and the Inmate Welfare Trust Fund*, and again in 1998 in *Maintaining Family Contact When a Family Member Goes to Prison*, Senate and House of Representatives committees examined the entrepreneurial activities of canteen accounts within the state correctional system. The first report documented the millions of dollars of cash flow within the Department of Corrections' accounts and the agency's creation of a virtual internal appropriations process independent of the state budgeting system. The second report discussed the high profit margins assessed by deregulated long distance telephone carriers on inmate family members for telephone calls. The agency used these returns for internal expenditure purposes, irrespective of legislative appropriations policy.

In three separate reports issued by the Office of Program Policy Analysis and Governmental Accountability (Nos. 94-21, 96-46, and 97-68) additional anomalies were noted in internal management practices on such accounts operated both by the Department of Corrections and certain private sector correctional vendors. Chapter 94-273, Laws of Florida, provided additional oversight on the operation of such welfare funds, including a requirement that the funds be subject to appropriation. This committee substitute for committee substitute departs from that current policy and permits the DJJ to operate its enterprise accounts independently.

#### **VIII. Amendments:**

None.