

STORAGE NAME: h2007.go

DATE: April 9, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 2007 (PCB JJ 99-04)

RELATING TO: Criminal and Juvenile Justice

SPONSOR(S): Committee on Juvenile Justice and Representative Merchant

COMPANION BILL(S): CS/CS/SB 1594 (similar), CS/HB 37 (compare), and 1st ENG SB 138 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUVENILE JUSTICE YEAS 12 NAYS 0
- (2) GOVERNMENTAL OPERATIONS
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

HB 2007 substantially amends numerous sections of chapters 39, 419, 435, 784, 960, 984, and 985, F.S., all relating to the Florida juvenile justice system. The bill, which takes effect upon becoming law:

- 1) Expands the list of offenses precluding the employment of persons subject to Level 2 employment screening.
- 2) Requires the state to retain, for five years past their 21st birthday, the criminal history records of minors committed to maximum-risk residential programs.
- 3) Removes the Department of Legal Affairs (DLA) Office of the Attorney General's rulemaking authority regarding minimum standards for juvenile sex offender programs.
- 4) Defines "direct-support organization", and provides that such organizations may assist the Department of Juvenile Justice (DJJ) in juvenile crime prevention efforts. Provides that the DJJ may permit use by a direct-support organization of certain property and facilities.
- 5) Defines "aftercare". Redefines the terms "delinquency program" and "restrictiveness level".
- 6) Permits youth records submitted to the Florida Department of Law Enforcement (FDLE) for certain misdemeanor offenses to become a part of the state-level file to be used by criminal justice agencies for criminal justice purposes.
- 7) Replaces references to "furlough" with references to "release".
- 8) Replaces references to "aftercare" with references to "postcommitment community control" in s. 985.231, F.S. (1998 Supp.), relating to powers of disposition in juvenile cases. Provides for subsequent release and transfer, under specified circumstances.
- 9) Provides legislative intent with regard to aftercare, provides for delivery of aftercare services, and provides for procedures to be followed in the event aftercare is violated by a juvenile.
- 10) Eliminates the requirement that the DJJ inform school superintendents of the presence of children with a known history of sexual behavior with other juveniles.
- 11) Requires the DJJ to create a certified program for juvenile justice staff with a competency-based examination process. Establishes minimum qualifications for employment.
- 12) Permits certain agencies to participate in and expend funds for crime prevention.

The fiscal impact of this bill has not yet been determined.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In order to better organize the bill analysis, some bill sections have a present situation summary below. Not every section of the bill will need an individual summary.

Section 1

The bill allows the DJJ to expand its newly proposed screening requirements for employees to ensure that persons who have been found guilty of or entered a plea of nolo contendere or guilty to any offense named in the bill may not work for the Department. These offenses include battery on a detention or commitment facility staff; transporting a minor across state lines with criminal intent pending custody proceedings; possession of weapons or destructive devices on school property; resisting arrest with violence; depriving a law enforcement or correctional officer means of protection or communication; aiding in an escape; recruiting a person to join a criminal gang; inflicting cruel or inhuman treatment on an inmate; harboring or concealing an escaped prisoner; engaging in sexual misconduct in juvenile justice programs; and introducing contraband to detention facilities.

Present Situation: When hiring employees who will work with juveniles, the DJJ is required to use Level 2 screening standards as provided for in s. 435.04, F.S. (1998 Supp.). 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 FDLE's FCIC, and federal criminal records checks through the Federal Bureau of Investigation's NCIC. They may also 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.).

Section 2

The bill would add the records of a minor committed to a maximum-risk residential program to the list of juvenile records which are to be retained for five years after the date the offender reaches age 21, and then expunged (unless the minor is adjudicated as an adult for a forcible felony or, after becoming an adult, is convicted of a forcible felony and his or her criminal record has not yet been destroyed).

Present Situation: Presently, the FDLE retains the records of youth classified as serious or habitual juvenile offenders for five years after the date the youth reaches age 21. At that time, the records are expunged unless a person age 18 or older is convicted of a forcible felony and the person's criminal history record as a minor has not been destroyed. In this instance, the adult and minor records are merged to form the adult record. In addition, if a minor is adjudicated as an adult for a forcible felony, the record as a minor must be merged with the criminal history record as an adjudicated adult.

If a minor is not classified as a serious or habitual juvenile offender, the FDLE will retain the records for five years after the date the minor reaches age 19, then will expunge the records, unless one of the above exceptions are applicable.

Section 4

Creates s. 985.421, F.S., to provide the DJJ with the statutory authority to have a direct service organization (DSO). Defines DSOs as not-for-profit, incorporated organizations with all rights and responsibilities of not-for-profit organizations, that meet DJJ goals and interests. Explains guidelines for DSOs when using DJJ property without charge. Establishes the board of directors of DJJ DSOs. Authorizes the Secretary of DJJ to appoint board members and define representation.

Present Situation: The Florida Business Partners for Prevention (FBPP) is a public-private organization that has had an ongoing partnership with the DJJ since 1994. At present, the FBPP 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 DSO. At the present time, however, the DJJ has no statutory authority to have a DSO.

Section 5

“Aftercare” would be defined as the care, treatment, help, and supervision provided juveniles released from residential commitment programs to promote rehabilitation and prevent recidivism. The purpose of aftercare is to protect public safety, reduce recidivism, increase responsible productive behaviors, and provide for successful transition of care and custody of the youth from the state of the family. Examples of aftercare include, but are not limited to minimum-risk nonresidential programs, reentry services and postcommitment community control (PCCC).

Also, minimum-risk nonresidential programs are expanded to include any nonresidential or supervision programs that are used for aftercare placement.

Present Situation: There is no statutory definition provided for the term “aftercare” services. However, by statute, aftercare is required to be in the juvenile justice continuum of programs and services offered to youth committed to the DJJ. Because the term “aftercare” is not defined by statute, it has been difficult for those implementing ch. 985, F.S., to know exactly what programs fall within the aftercare category.

Sections 5, 6, 7, 9, 11, 13, and 14

Removes statutory references to “furlough.”

Present Situation: A furloughed youth is one who has been released from a commitment program and supervised by a DJJ case manager but not discharged by the committing court. The DJJ has jurisdiction over a youth on furlough although the parents have physical custody. It retains the discretion to terminate or revoke a youth’s furlough status.

According to the DJJ, the term “furlough” is obsolete in the juvenile context because only adults are furloughed.

Section 8

Youth charged with certain misdemeanors will now have those records submitted to the FDLE for inclusion in the state-level file and utilized by criminal justice agencies for criminal justice purposes.

Present Situation: Under the provisions of s. 985.212, F.S., a child charged with certain misdemeanors will have their fingerprints and photographs taken and submitted to the FDLE. These misdemeanors include assault; battery; carrying a concealed weapon; unlawful use of destructive devices or bombs; negligent treatment of children; assault on a law enforcement officer, a firefighter, or other specified officers; open carrying of a weapon; exposure of sexual organs; unlawful possession of a firearm; petit theft; cruelty to animals; and arson, resulting in bodily harm to a firefighter. 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 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.

Section 9

Replaces all references to “aftercare” with “postcommitment community control.” Allows youth to be released to a post-residential, minimum-risk nonresidential aftercare program following commitment to a residential commitment program. Provides for youth failing to complete the program.

Present Situation: There are no statutory definitions of aftercare programs, but the Juvenile Justice Accountability Board (JJAB) defines it as a post-placement program for juveniles completing the initial phase of a commitment program. A transition plan is developed to reintroduce the youth to the community and to provide the appropriate educational or vocational training. The objectives of aftercare programs are to eliminate re-offending and to assist youth with successful readjustment into the community.

Aftercare services are provided for any youth returning to his community from a residential commitment program. (See, s. 985.316, F.S.) Generally, for conditions of aftercare services, the authority of the DJJ is limited to what the courts will allow for youth still committed. However, the DJJ does have the authority to transfer a youth from a commitment program or facility to another program of the same, higher, or lower restrictiveness level. (See, s. 985.404, F.S.)

Sections 15 and 16

Replaces the requirement that the DJJ inform school superintendents of the presence of any child who has a known history of sexual behavior with other juveniles with the requirement that the DJJ disclose to school superintendents the presence of any child over whom the DJJ has control, who has received an adjudication of delinquency or has had adjudication withheld for a sexual offense.

Present Situation: The DJJ must disclose to a school superintendent of the presence of a child who is under the supervision of the DJJ who: has a known history of sexual behavior with other juveniles, is an alleged sex offender, or who has been convicted of certain sexual offenses.

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.

Section 17

Requires the Juvenile Justice Standards and Training Commission (JJSTC) to establish a certified program for juvenile justice training with competency-based examinations. Outlines minimum employment requirements for DJJ staff. These minimum hiring standards require that, as of October 1, 1999, new employees must:

- *be at least 19 years old;*
- *be a U.S. citizen;*
- *be a high school graduate or its equivalent;*
- *not have been convicted of a felony or misdemeanor involving perjury or a false statement, or have been dishonorably discharged from the military;*
- *have abided by the fingerprinting and background investigations provided in ch. 985;*
- *have passed a physical exam (including drug testing);*
- *have submitted an affidavit attesting to the applicant’s compliance with the above requirements;*
- *have completed any commission-approved basic training program; and*
- *have achieved an acceptable score on a certification examination.*

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 DOC.

Present Situation: Section 985.406, F.S. (1998 Supp.), provides for juvenile justice training for all staff and providers delivering services to youth. The JJSTC designs, implements, maintains, evaluates, and revises basic training programs. 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. Currently, there are no minimum requirements for employment standards.

Section 18

Authorizes the DLA, the state attorneys, the DOC, the DJJ, the Parole Commission, the State Courts Administrator and circuit court administrators, the FDLE, and law enforcement agencies to participate in and expend funds for crime prevention.

Present Situation: Section 960.001, F.S. (1998 Supp.), authorizes the DLA, the state attorneys, the DOC, the DJJ, the Parole Commission, the State Courts Administrator and circuit court administrators, the FDLE, and law enforcement agencies to develop victim assistance services and programs for persons affected by crime. These services may include victim assistance education and training, return of property to the victim, and notification of rights to restitution.

B. EFFECT OF PROPOSED CHANGES:

(1) Criminal history records of minors committed to maximum-risk residential programs would now be included in the list of records the state would retain for five years past a youth's 21st birthday before the records could be expunged.

(2) The Florida Business Partners for Prevention may adopt bylaws and develop an organizational structure to assist DJJ in juvenile crime prevention efforts. The organization may incorporate as a not-for-profit organization and become a DJJ Direct Support Organization.

(3) HB 2007 would provide the first definition of "aftercare". The DJJ would retain authorization to transfer youth unsuccessfully completing aftercare to other programs. The bill also changes the term "aftercare" to post-commitment community control.

(4) Youth fingerprints and photographs submitted to the FDLE for certain misdemeanor offenses would become a part of the state-level file to be used by criminal justice agencies for criminal justice purposes.

(5) The DJJ would no longer have to inform school superintendents of the presence of any child with a known history of sexual behavior with other juveniles. Rather, the DJJ would only be required to inform superintendents of juveniles who have a criminal history of sexual offenses.

(6) The DJJ would create a competency-based job classification system for juvenile justice direct-care staff. In addition, there would now be minimum qualifications for employment which are the same as those requirements in the criminal justice field.

(9) The DLA, the state attorneys, the DOC, the DJJ, the Parole Commission, the State Courts Administrator and circuit court administrators, the FDLE, and law enforcement agencies would be authorized to participate in and expend funds for crime prevention.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The state would be required to retain the criminal history records of minors committed to maximum-risk residential programs for five years past a youth's 21st birthday. Also, the DJJ would be required to create a competency-based classification system for juvenile justice direct-care staff.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 39.0132, 419.001, 435.04, 784.075, 943.0515, 960.001, 984.03, 984.05, 985.03, 985.04, 985.207, 985.208, 985.212, 985.227, 985.231, 985.308, 985.31, 985.311, 985.312, 985.3141, 985.316, 985.404, 985.406, and 985.417, F.S. Creates s. 985.421, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1, amends s. 435.04, F.S. (1998 Supp.), *Level 2 screening standards*. Expands the list of offenses precluding the employment of persons subject to Level 2 employment screening.

Section 2, amends s. 943.0515, F.S., *retention of criminal history records of minors*. Adds the records of a minor committed to a maximum-risk residential program to the list of juvenile records which may be retained for five years after the date the offender reaches age 21 unless the minor is adjudicated as an adult for a forcible felony or the adult is convicted of a forcible felony and his or her criminal record has not yet been destroyed.

Section 3, amends subsections (14) and (15) of s. 985.308, F.S. (1998 Supp.). Revokes the Department of Legal Affairs (DLA) Office of the Attorney General's rulemaking authority regarding minimum standards for juvenile sex offender programs.

Section 4, creates s. 985.421, F.S., *Florida Business Partners for Prevention; use of property; audit*. Defines "direct-support organization" as a not-for-profit, incorporated organization with all rights and responsibilities of not-for-profit organizations and meeting DJJ goals and interests. Explains guidelines for direct-support organizations when using DJJ property without charge. Establishes the board of directors of DJJ direct-support organizations. Authorizing the Secretary of DJJ to appoint board members and defines representation.

Section 5, creates subsection (4) of s. 985.03, F.S., *Definitions*. Defines "aftercare" and lists examples of aftercare programs. Includes any nonresidential or supervision programs that are used for aftercare placement as part of the definition of the minimum-risk nonresidential restrictiveness level.

Sections 5, 6, 7, 9, 11, 13, and 14, remove statutory references to "furlough".

Section 8, amends s. 985.212, F.S., *Fingerprinting and photographing*. Youth charged with certain misdemeanors will now have those records submitted to the FDLE for inclusion in the state-level file to be utilized by criminal justice agencies for criminal justice purposes.

Section 9, amends s. 985.231, F.S., *Powers of disposition in delinquency cases*. Replaces all references to "aftercare" with "postcommitment community control." Allows youth to be released to a postresidential, minimum-risk nonresidential aftercare program following placement at a residential commitment program. Provides for youth failing to complete the program.

Section 10, amends subsection (2) of s. 985.3141, F.S. (1998 Supp.), *Escapes from secure detention or residential commitment facility*. Corrects statutory reference for youth escaping from detention or residential facilities.

Section 11, amends s. 985.316, F.S., *Furlough and intensive aftercare*. Changes title to "Aftercare." States Legislative intent that aftercare be provided to each youth leaving residential commitment programs. Aftercare services for youth released from residential commitment programs shall be at

either minimum-risk nonresidential commitment restrictiveness programs or postcommitment community control. Removes statutory references to furlough and reentry programs.

Section 12, amends s. 985.404, F.S., *Administering the juvenile justice continuum*. Authorizes the DJJ to transfer youth when necessary to other programs, including a postresidential minimum-risk nonresidential aftercare program.

Sections 15 and 16, amends ss. 39.0132 and 985.04 F.S., (1998 Supp.), *Oaths; records; confidential information*. Removes the mandate that the DJJ inform school superintendents of the presence of any child who has a known history of sexual behavior with other juveniles, and replaces it with a requirement that the DJJ only disclose that a student has a criminal history of sexual behavior.

Section 17, amends s. 985.406, F.S., (1998 Supp.), and creates a new subsection, *Juvenile Justice training academies established; Juvenile Justice Standards and Training Commission created; Juvenile Justice training Trust Fund created*. Creates a certified program for juvenile justice training with competency-based examinations. Outlines minimum employment requirements for DJJ staff.

Section 18, creates a new subsection to s. 960.001, F.S., (1998 Supp.), *Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems*. Authorizes the DLA, the state attorneys, the DOC, the DJJ, the Parole Commission, the State Courts Administrator and circuit court administrators, the FDLE, and law enforcement agencies to participate in and expend funds for crime prevention.

Section 19, corrects statutory reference.

Section 20, replaces reference to “an intake counselor or case manager” with “a juvenile probation officer” and corrects statutory references in s. 784.075, F.S. (1998 Supp.).

Sections 21-25, correct statutory references.

Section 26, provides an effective date upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, FISCAL COMMENTS.

2. Recurring Effects:

FY 99-00	FY 00-01	FY 01-02
\$2,425,234-GR	\$5,301,000-GR	\$5,301,000-GR

3. Long Run Effects Other Than Normal Growth:

See, FISCAL COMMENTS.

4. Total Revenues and Expenditures:

See, FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:
See, FISCAL COMMENTS.
2. Recurring Effects:
See, FISCAL COMMENTS.
3. Long Run Effects Other Than Normal Growth:
See, FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
See, FISCAL COMMENTS.
2. Direct Private Sector Benefits:
See, FISCAL COMMENTS.
3. Effects on Competition, Private Enterprise and Employment Markets:
See, FISCAL COMMENTS.

D. FISCAL COMMENTS:

The fiscal impact of HB 2007 has not yet been determined.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

In its March 9, 1999, full committee meeting, the Committee on Juvenile Justice passed six amendments to HB 2007.

Amendment 1) Allows the DJJ to expand its newly proposed screening requirements for employees to ensure that persons who have been found guilty of or entered a plea of nolo contendere or guilty to any offense named in the amendment may not work for the DJJ. These offenses are battery on a detention or commitment facility staff; transporting a minor across state lines with criminal intent pending custody

proceedings; possession of electric weapons or destructive devices on school property; resisting arrest with violence; depriving a law enforcement officer means of protection or communication; aiding in an escape; harboring or concealing an escaped prisoner; and introducing contraband to detention facilities.

Amendment 2) Removes the rulemaking authority from the Department of Legal Affairs' Office of the Attorney General to adopt minimum standards for juvenile sexual offender programs.

Amendment 3) Corrects statutory reference for youth escaping from detention or residential facilities.

Amendment 4) Inserts a title amendment relating to aftercare programs.

Amendment 5) Deletes the provision in PCB JJ 99-04 that would have authorized the DJJ to use tax-exempt financing, including the issuance of tax-exempt bonds and certificates of participation.

Amendment 6) Requires the DJJ to disclose to the superintendent of a school system the presence of any youth in the care of the department who has received an adjudication of delinquency or had an adjudication withheld for a sexual offense.

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Bridget Edmond

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Jen Girgen

Staff Director:

Jimmy O. Helms