

STORAGE NAME: h2007z.jj
DATE: May 6, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUVENILE JUSTICE
FINAL ANALYSIS**

BILL #: HB 2007 (PCB JJ 99-04) **(Passed as sections 6-23 of HB 349)**

RELATING TO: Criminal and Juvenile Justice

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

COMPANION BILL(S):

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

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

I. FINAL ACTION STATUS:

HB 2007 did not pass the 1999 Legislative session, but passed in HB 349. On June 8, 1999, HB 349 was approved by the Governor and became Chapter 99-284, Laws of Florida. See the comments section for bill history.

II. 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 and sets out the requirements for a "direct-support organization". Provides that such organizations may assist the Department of Juvenile Justice (DJJ) in juvenile crime prevention efforts.
- 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 criminal history records 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, and provides for delivery of aftercare services.
- 10) Clarifies that the DJJ is required to inform school superintendents of the presence of children with a known **criminal** 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.
- 13) Allows an officer, who has probable cause to believe that a juvenile is in violation of his or her home detention, or has absconded from a juvenile justice residential commitment program, may take the juvenile into custody.
- 14) Makes the Rules of Evidence used in juvenile appellate cases the same as in the adult system.
- 15) Provides the DJJ with the authority to operate a welfare trust fund.

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

III. 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 of HB 2007

The PCB would add 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 criminal record has not yet been destroyed.

Presently, the Department of Law Enforcement (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 persons criminal history record as a minor has not been destroyed. The adult and the minor records must be 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 expunge the records unless the above stated exceptions are met.

Section 2 of HB 2007

Creates the Florida Business Partners for Prevention and defines direct-support organizations 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 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 define representation.

The Florida Business Partners for Prevention is a public-private partnership with the DJJ to serve as an advisory and support group whose main function would be to help prevent juvenile delinquency. The partnership was formed in 1994 and has no formal bylaws or articles of incorporation. The DJJ is not authorized presently to have direct service organizations.

Section 3 of HB 2007

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 post-commitment community control (PCCC). Statutory references to "furlough" are deleted. Minimum-risk nonresidential programs are expanded to include any nonresidential or supervision programs that are used for aftercare placement.

There is no statutory definition provided for the term aftercare services. However, aftercare is in the juvenile justice continuum of programs and services offered to youth committed to the DJJ. The Legislative intent for aftercare is stated in s. 985.316, F.S. "... to prevent recidivism of juvenile offenders, reentry and aftercare services shall be provided statewide to each juvenile who returns to his or her community from a residential commitment program. . ."

Aftercare is not considered a risk-level program such as a minimum-risk nonresidential program, but a transitional program to assist youth returning or preparing to return to the community. Although the statutes do not define aftercare specifically, they do offer an explanation of intensive

aftercare. It shall include regular contact between the youth and DJJ staff for one year after transfer from a residential commitment program.

Section 4 of HB 2007

Removes references to "furlough."

A furloughed youth is 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.

Section 6 of PCB 4

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

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. The misdemeanors are the following: 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.

The juvenile records are maintained in a separate, confidential file. These records are available for public disclosure under exceptional circumstances; however, they are available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal guardians of the child, their attorneys and any other person authorized by the court to have access to the juvenile records. The records are subject to the orders of any court of jurisdiction, and may be opened to anyone the courts determine has shown just cause. A law enforcement officer also has authority to show the records to victims or witnesses of a crime in order to properly identify a youth.

Section 7 of HB 2007

Replaces all references to "aftercare" with "post-commitment community control." Changes statutory references from "furlough" to "released." 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.

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. There are several types of aftercare programs grouped under the program models of surveillance and day treatment.

Surveillance programs include furlough, post-commitment community control (PCCC), re-entry and field services supervised commitment care. The day treatment model includes intensive day treatment programs. These programs vary by whether the court retains jurisdiction over the juvenile or whether the DJJ, parents or guardians have legal custody of the youth.

Surveillance Programs

Furlough -- the parents of a furloughed youth have physical custody of the child, but the DJJ retains legal custody. Conditions of furlough are established prior to a youth's release from a program and may be revoked or terminated at the discretion of the DJJ. A furloughed youth

generally remains in the program for 120 days. As a practical matter, the use of post-commitment community control has replaced furlough.

Post-commitment community control (PCCC) - the committing court retains jurisdiction of the youth and sets the conditions of supervision. A case manager is assigned to maintain contact with youth for the length of PCCC which is generally 90 to 180 days. The case manager can file an affidavit for youth violating PCCC with the state attorney. The state attorney has the discretion to file a petition with the court. If a petition is filed the court will consider the allegations and an adjudicatory hearing is convened. In situations where the allegations are founded, the court can continue PCCC or consider more restrictive sanctions. Under the provisions of s. 985.231, F.S., the court retains jurisdiction over any youth violating community control and sets the consequences of such violations.

Field Services Supervised Commitment Aftercare - serves youth in the custody of their parents but on a committed status. DJJ provides needed supervision. This program is for youth in areas where traditional aftercare services such as re-entry and intensive day treatment programs are not available.

Re-entry - programs are used for youth transferred from a residential commitment program back to the community. They are in the physical custody of the parents or legal guardians but on commitment status with the DJJ; therefore, DJJ provides the necessary supervision for these youth including any transition plans determined appropriate. The average length of stay in a re-entry program is for 90-120 days. Any youth violating the conditions of re-entry will have a case staffing held and recommendations submitted to the court of jurisdiction. The court has the authority to maintain the current status or transfer the youth to a more restrictive commitment program.

Day Treatment Programs

Intensive Day Treatment Programs - serve youth transferred from residential commitment programs and on a committed status but in the care and custody of their parents or legal guardians. Day treatment is more intensive than the programs under the supervision programs model. Youth are provided services such as needs assessment, and educational and vocational training. The average length of stay is six to nine months. Upon the completion of a program, the court is advised of a youth's pending release and it determines whether a less intensive aftercare program is needed or whether termination of commitment status is appropriate.

Aftercare services are provided for any youth returning to his community from a residential commitment program. (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. (Section 985.404, Florida Statutes).

Section 10 of HB 2007

Authorizes the DJJ to use tax-exempt financing for juvenile justice facilities including the issuance of tax-exempt bonds and certificates of participation.

The DJJ is authorized to enter into lease-purchase agreements with private corporations and other government entities in order to provide juvenile justice facilities for committed youth. Presently, the DJJ may not use tax-exempt financing.

Sections 13 and 14 of HB 2007

Removes the authority of DJJ to inform school superintendents of the presence of any child who has a known history of sexual behavior with other juveniles.

The DJJ must disclose to the superintendent of a school the presence of any youth under the supervision of the DJJ with a known history of sexual behavior with other juveniles. A youth's presence must also be disclosed for allegations of juvenile sex offenses or for youth pleading guilty or nolo contendere or found to have committed sexual battery, prostitution, lewd or indecent

exposure, child abuse or distribution or sale of obscene or profane literature. It is a misdemeanor for an employee of a district school board to disclose a youth's information to any unauthorized person.

The current statutory requirements are too broad and allow for any type of known sexual history to be disclosed whether it contributes to the well being of a youth or not.

Section 15 of HB 2007

Creates a certified program for juvenile justice training with competency-based examinations. Outlines minimum employment requirements for DJJ staff.

Section 985.406, F.S., provides for juvenile justice training for all staff and providers delivering services to youth. Judges, state attorneys, public defenders and law enforcement officers may participate in training programs; however, such training is required of staff and providers. It is based on a job-task analysis and is relevant to specified work areas. The Juvenile Justice Standards and Training Commission designs, implements, maintains, evaluates and revises basic training programs. There are no minimum requirements for employment standards.

Section 16 of HB 2007

Authorizes the departments of Legal Affairs, Corrections, and Law Enforcement and the Parole Commission, State Courts Administrator, circuit court administrators, the state attorneys, and the each sheriff to implement crime prevention efforts under the statutory provisions for crime victim assistance.

Section 960.001 authorizes the departments of Legal Affairs, Corrections, Law Enforcement, the Parole Commission, State Courts Administrator, circuit court administrators the state attorneys, and the sheriff of each county to develop victim assistance services and programs for persons affected by adult or juvenile 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 criminal history records 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 non-criminal 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.

(7) 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.

(8) Allows an officer, who has probable cause to believe that a juvenile is in violation of his or her home detention, or has absconded from a juvenile justice residential commitment program, may take the juvenile into custody.

(9) Makes the Rules of Evidence used in juvenile appellate cases the same as in the adult system.

(10) Provides the DJJ with the authority to operate a welfare trust fund.

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?

N/A

(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?

N/A

b. If an agency or program is 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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

a. If the bill purports 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?

N/A

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:

(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, 985.234, 985.308, 985.31, 985.311, 985.312, 985.316, 985.404, 985.406, 985.415, and 985.417, F.S. Creates s. 985.4145, and 985.421, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Refer to the final analysis of HB 349. (Sections 6 and 23 of the bill).

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

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:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

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

V. 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.

VI. COMMENTS:

03/23/99 H Filed

03/24/99 H Introduced -HJ 00368

03/29/99 H Referred to Governmental Operations (PRC); Criminal Justice Appropriations (FRC) -HJ 00478

04/12/99 H On Committee agenda-- Governmental Operations (PRC), 04/14/99, 2:00 pm, 317C

04/14/99 H Comm. Action: Unanimously Favorable with 1 amendment(s) by Governmental Operations (PRC) -HJ 00750

04/19/99 H Now in Criminal Justice Appropriations (FRC) -HJ 00750

04/30/99 H Died in Committee on Criminal Justice Appropriations (FRC), Iden./Sim./Compare Bill(s) passed, refer to HB 349 (Ch. 99-284)

VII. 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 DJJ to expand its newly proposed screening requirements for employees to ensure persons who have been found guilty or entered a plea of nolo contendere or guilty to any offense named in the amendment may not work for the department. The 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, 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) Removes from the PCB the DJJ requirement that persons desiring to work for the department be United States citizens.

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.

On April 14, 1999, the Committee on Governmental Operations adopted a strike-everything amendment, and reported the amended bill favorably. The amendment makes the following changes in HB 2007:

- Requires the DJJ to disclose to a school superintendent that a juvenile has a history of criminal sexual behavior with other juveniles.
- Adds that an officer, who has probable cause to believe that a juvenile is in violation of his or her home detention, or has absconded from a juvenile justice residential commitment program, may take the juvenile into custody.
- Revamps current law relating to the Community Juvenile Justice Partnership Grant program to clarify the types of programs and services that should be provided with these funds, and the criteria the DJJ must consider when awarding these grants.
- Makes the Rules of Evidence used in juvenile appellate cases the same as are used in the adult system.
- Provides the DJJ with the authority to operate a welfare trust fund.
- Deletes the requirement that DJJ employees have passed a physical exam, be a U.S. citizen, and complete a commission-approved basic training program.

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VIII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

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Staff Director:

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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUVENILE JUSTICE:

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