

STORAGE NAME: h1759.cj

DATE: April 7, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: HB 1759

RELATING TO: Classification and Placement of Juveniles

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

TIED BILL(S):

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

- (1) JUVENILE JUSTICE YEAS 13 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The proposed committee bill addresses classification and placement of juvenile offenders, amending several sections of ch. 985, F.S. The proposed committee bill amends s. 985.03, F.S., which provides definitions for the chapter. Specifically, subsection (47) of s. 985.03, F.S., is amended to provide a new definition relating to classification and residential placement of juvenile offenders. The proposed committee bill amends substantive sections of the chapter that are relevant to classification and residential placement determinations. These amendments affect Delinquency Case Processing, ch. 985, Pt. II, F.S., and the Juvenile Justice Continuum, ch. 985, Pt IV, F.S.

The proposed committee bill takes effect October 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Please refer to the "Section-by-Section Analysis" at Paragraph I-D, below.

C. EFFECT OF PROPOSED CHANGES:

Please refer to the "Section-by-Section Analysis" at Paragraph I-D, below.

D. SECTION-BY-SECTION ANALYSIS:

OVERVIEW:

Chapter 985, F.S., divides responsibility for classification and placement of juvenile offenders between the courts and the Department of Juvenile Justice ("DJJ"). DJJ staff, state attorneys, and defense counsel make recommendations to the court concerning a juvenile offender's risk classification at the case disposition hearing. Prior to the disposition hearing, a predisposition report is prepared and made available to the court, the state attorney, the defense counsel, DJJ, and the child. With regard to the predisposition report, s. 985.229(1), F.S., provides:

The predisposition report shall be the result of the multidisciplinary assessment when such assessment is needed, and of the classification and placement process, and it shall indicate and report the child's priority needs, recommendations as to a classification of risk for the child in the context of his or her program and supervision needs, and a plan for treatment that recommends the most appropriate placement setting to meet the child's needs with the minimum program security that reasonably ensures public safety.

At the disposition hearing, the court enters a commitment order informed by the predisposition report and the recommendations of DJJ staff, the state attorney, and the defense counsel. The commitment order specifies the risk level at which DJJ is to place the child. DJJ is responsible for placing the child in a risk level-appropriate program that will meet the child's treatment needs. Pursuant to s. 985.231(1)(d), F.S., any commitment of a delinquent child must be for an indeterminate period of time.

SECTION 1.

The proposed committee bill amends s. 985.03, F.S., which provides definitions for the chapter. Section 985.03(47), F.S., defines the phrase "restrictiveness level" to mean the level of custody provided by programs that service the custody and care needs of committed children. The subsection further defines five restrictiveness levels:

- (a) Minimum-risk nonresidential.
- (b) Low-risk residential.
- (c) Moderate-risk residential.
- (d) High-risk residential.
- (e) Juvenile correctional facilities or juvenile prison.

Respectively, these levels are often referred to as Level 2, Level 4, Level 6, Level 8, and Level 10. The levels are a continuum, with each successive level intended to indicate the increased degree of risk that the youth presents to public safety. A variety of commitment programs are operated within each level. Some programs, like boot camps and halfway houses, operate at several levels.

A review of DJJ Residential Commitment Services was conducted by the Office of Program Policy Analysis and Governmental Accountability ("OPPAGA"). In Report No. 96-48, issued February 10, 1997, OPPAGA reported:

Finding 1.1

There is very little or no difference from one restrictiveness level to the next in primary program elements, which are security, length of stay, and treatment services.

...

Finding 1.2

There is considerable overlap across restrictiveness levels in criminal histories and the ages of assigned youth.

...

Finding 1.3

Although program services are similar and the characteristics of youth overlap, there is much variation in the daily rates the Department pays program providers.

In response to this report, DJJ noted that program elements such as length of stay and treatment services are driven by the assessed risk and service needs of individual offenders, not by commitment levels. See Report No. 96-48, p. 8. However, DJJ acknowledged that physical security of facilities is a major challenge in the current commitment level system. See id.

The proposed committee bill amends s. 985.03(47), F.S., for the purpose of better differentiating residential commitment levels relative to the issue of security. The amendment is consistent with recommendations made by the Juvenile Justice Classification and Placement Workgroup, which was assembled at the request of the House Committee on Juvenile Justice to address OPPAGA Report No. 96-48 and make legislative recommendations. See, e.g., Report of Recommendations of the Juvenile Commitment Classification Workgroup.

Participants in the Workgroup identified a lack of understanding by the general public, and even among officers of the court, relative to the level of security required of programs operating within each commitment level. See Juvenile Justice Classification and Placement Workgroup Minutes, Jan. 21, 2000. Consistent with the OPPAGA report, the Workgroup found that similar types of programs are offered at various commitment levels and that there is overlap in the criminal histories of youth at all levels of commitment. See id. The Workgroup found such inconsistencies hinder an understanding of the present commitment system. See id. The inconsistency among program levels relative to whether or not youth committed to the program have unsupervised access to the community was primary security concern identified by the Workgroup. See id. The Workgroup recommended descriptive definitions of the commitment levels in order to facilitate understanding and improve placement of youth in appropriate commitment programs. See id.

Incorporating recommendations of the Workgroup, the proposed committee bill provides a definition for "residential commitment level" in subsection (47) of section 985.03, F.S., rather than "restrictiveness level." The "residential commitment level" is defined as the "level of security" provided by a program rather than the "level of custody." Four levels of residential commitment are provided and minimum security measures are specified for programs operated at each level. By specifying minimum security measures for each level of residential commitment, the proposed committee bill strengthens the continuum of levels. Each successive level is intended to represent the increased degree of risk that a committed youth presents to public safety. Recognizing this intent, the proposed committee bill provides successive increases in the required amount of minimum security measures for programs relative to each successive level.

Under the proposed committee bill, youth committed to the low-risk residential commitment level may have unsupervised access to the community. DJJ may require that facilities operated at this level be staffed with 24-hour awake supervision of residents. Recognizing that youth assessed at this level should represent a low risk to public safety, youth committed at this level may have opportunities to engage in community activities away from the facility without direct staff supervision. Children found to have committed delinquent acts involving firearms or sexual offenses, or delinquent acts that would be life felonies or first degree felonies if committed by an adult are not to be committed to a low-risk residential commitment level pursuant to the provisions of the proposed committee bill.

Recognizing that youth committed to the moderate-risk residential commitment level represent a moderate risk to public safety, the proposed committee bill provides that these youth may only have supervised access to the community. The proposed committee bill requires additional security measures for facilities operating within the moderate-risk level. Such facilities must provide 24-hour awake supervision of residents. The facilities must be either environmentally secure or hardware-secure with walls, fencing, or locking doors. DJJ reports that existing programs within the moderate-risk restrictiveness level currently meet these proposed security requirements.

Recognizing that youth committed to the high-risk residential commitment level represent a high risk to public safety, the proposed committee bill requires that these youth shall not have access to the community. The proposed committee bill requires minimum security measures for facilities operating within the high-risk level. Such facilities must be hardware-secure with perimeter security fencing and locking doors. DJJ reports that the majority of existing programs within the high-risk restrictiveness level meet the proposed security requirements. DJJ notes that some facilities presently classified as high-risk may require security upgrading if they are to continue operating at this level. Alternatively,

these programs could be reclassified to the moderate-risk commitment level. The additional security measures and interventions provided in this section of the proposed committee bill are consistent with current DJJ policy for existing programs in the present high-risk restrictiveness level. DJJ reports that no change in practice is anticipated for programs operating in this level.

The proposed committee bill specifies that youth committed at the maximum-risk residential commitment level shall not have access to the community. Juvenile correctional facilities and juvenile prisons are specifically included as programs that fall within the maximum-risk residential commitment level. Facilities that operate within this level are required to be hardware-secure with minimum security features to include perimeter security fencing and locking doors. Single-cell occupancy is required; except that youth may be housed together during pre-release transition. DJJ reports that current juvenile correctional facilities meet the facility security requirements provided in the proposed committee bill for programs within the maximum-risk residential commitment level. The additional security measures and interventions provided in this section of the proposed committee bill are consistent with current DJJ policy for existing programs in the present DJJ policy for juvenile correctional facilities. Therefore, no change in practice is anticipated.

The proposed committee bill deletes references throughout the current definition to specific program types that operate at each commitment level. At the recommendation of the Workgroup, commitment programs are to be classified pursuant to the level of security provided at the facility. See id. Pursuant to the new definition provided for subsection (47) of s. 985.03, F.S., some programs may be reclassified at a commitment level other than the level at which they are presently specified by statute.

Following the recommendations of the Workgroup, the proposed committee bill deletes the minimum risk non-residential commitment restrictiveness level from subsection (47) of s. 985.03, F.S. See id. However, the proposed committee bill does not delete the programs and services that currently operate within that level. The workgroup recommended that programs and services presently operated at the minimum risk non-residential be considered as part of the Probation / Community Control continuum of services. See id. There is little, if any, difference relative to the issue of security between minimum risk non-residential programs and Probation / Community Control services. Under the proposed committee bill, nonresidential programs and services (with the exception of aftercare) will no longer be considered to have commitment-level status. The effect of this amendment is that any transfers of youth from nonresidential placement programs to residential commitment placement programs will require court action. Presently, DJJ transfers youth from one placement level to another through administrative action. It should be noted that some members of the Workgroup contended that due process requires any effected youth to be afforded an opportunity to be heard in court before placement level transfer. See id.

SECTION 2.

The proposed committee bill amends paragraphs (a) of s. 985.21, F.S., which relates to intake and management of delinquency cases. Current law provides that each child receiving a delinquency referral shall be screened for a broad array of problems and conditions that may have caused the child to come to the attention of DJJ or law enforcement. At the recommendation of the Workgroup, the proposed committee bill amends s. 985.21(1)(a), F.S., to provide for more comprehensive screening. See id. In addition to screening for the presence of medical, psychiatric, psychological, substance abuse, or educational problems, the proposed committee bill also directs screening for

vocational problems and for determining whether the child poses a danger to self or others in the community.

The proposed committee bill directs that the results of the screening shall be made available to the court and to officers of the court. The consensus of the Workgroup was that early comprehensive screening for and identification of problems or conditions that may have caused the child to come to the attention of DJJ or law enforcement is critically important to the classification and placement process, which is considered to be offender-based rather than offense-based. See id.

SECTION 3.

The proposed committee bill adds a new paragraph (d) to s. 985.215 (5), F.S., which specifies the conditions under which a child may be held in detention care. The new paragraph provides that a child who was not in secure detention at the time of the adjudicatory hearing may be placed under a special detention order for a period not to exceed 72 hours, excluding weekends and legal holidays, for the purpose of conducting a comprehensive evaluation if it is anticipated that the child may ultimately be placed in a residential commitment program. The circumstances under which a comprehensive evaluation may be ordered are specified in section 5 of the proposed committee bill, which amends s. 985.229(1), F.S., relative to predisposition reports and other evaluations.

The consensus of the Workgroup was that this amendment to s. 985.215, F.S., is needed to carry out the provisions of the amendment to s. 985.229(1), F.S., and to insure that the comprehensive evaluation is completed. See id. Judges, state attorneys, and public defenders who participated in the Workgroup agreed that some adjudicated youth would have to be placed in detention care in order to be available for evaluation. See id. The proposed committee bill specifies that the court shall order the least restrictive level of detention necessary to complete the comprehensive evaluation process that is consistent with public safety.

SECTION 4.

This section of the proposed committee bill amends s. 985.224, F.S., which relates to examination and treatment of youth found to have committed delinquent acts. The amendment to this section was not contemplated by the Workgroup. Instead, the Workgroup recommended that a comprehensive evaluation be conducted for any child for whom residential placement was anticipated or recommended. See id. The recommendation of the Workgroup, and DJJ's plan, was to reinvest approximately \$4.5 million presently appropriated to juvenile assignment centers for the purpose of conducting the comprehensive evaluations. See id.

This section of the proposed committee bill requires the court to order an educational needs assessment for any child who is adjudicated delinquent or for whom adjudication has been withheld. Pursuant to the provisions of the proposed committee bill, the educational needs assessment is to be conducted by "the district school board or the Department of Children and Family Services." This provision could have a significant fiscal impact on the district school boards and the Department of Children and Family Services.

Supporters of this section of the proposed committee bill have advised that their primary interest was to ensure that the educational needs of every child going into a residential program were identified by DJJ prior to program placement. Language in section 5 of the proposed committee bill, which amends s. 985.229, F.S., only provides that a

comprehensive evaluation of the child's educational and other treatment needs *may* be ordered by the court for any child for whom residential placement is anticipated. Use of the word "may" in this context concerned supporters of this section of the proposed committee bill. They feared that the educational needs of some children going to residential programs might not be identified or addressed pursuant to the provisions of section 5 of the proposed committee bill. However, supporters of this section have advised that if section 5 was amended to provide that a court *shall* order the comprehensive evaluation of any child for whom residential placement was anticipated, their concerns would be allayed.

Such an amendment would also conform with the original recommendations of the Workgroup. Supporters of this section of the proposed committee bill have acknowledged that this section could have unintended fiscal impacts on the local school districts and the Department of Children and Family Services. However, if section 5 of the proposed committee bill is amended to replace the "may" with a "shall," supporters of this section would agree that this section should be removed from the proposed committee bill. Together, such amendments would ensure that neither local school districts, nor the Department of Children and Family Services suffered any unintended fiscal impact from the proposed committee bill. Instead, such amendments would clarify that the responsibility and fiscal impact for the comprehensive evaluations belongs to DJJ. This was the original intent of the Workgroup and the plan of DJJ for reinvesting the \$4.5 million presently allocated to assignment centers.

SECTION 5.

The proposed committee bill amends subsections (1) and (3) of s. 985.229, F.S., which relates to predisposition reports and other evaluations. Current law provides that the court shall order a predisposition report at the disposition hearing. The proposed committee bill provides that the court may order a predisposition report, upon a finding that the child has committed a delinquent act. The effect of this change is to insure that the predisposition report is completed and available for consideration at the disposition hearing. The proposed committee bill adds the child and the child's parents or legal guardian to the list of specified parties to whom the predisposition report, as well as any other report or evaluation used to prepare the predisposition report, is to be made available prior to the disposition hearing.

The proposed committee bill allows the court discretion to dispose of some cases without a predisposition report. This change could facilitate timely disposition of minor offenses where residential commitment is not anticipated. The proposed committee bill provides that a predisposition report shall be ordered for any child for whom a residential commitment disposition is anticipated or recommended by an officer of the court or by DJJ.

Consistent with the recommendations of the Workgroup, the proposed committee bill authorizes the court to order a comprehensive evaluation for physical health, mental health, substance abuse, academic, educational, or vocational problems for any child for whom a residential commitment disposition is anticipated or recommended by an officer of the court or by DJJ. The consensus of the Workgroup was that a comprehensive evaluation may be essential in some cases to ensure that the classification and placement decision fully considers the child's treatment needs. See id. If a comprehensive evaluation is ordered, the proposed committee bill requires that a summary of the comprehensive evaluation be included in the predisposition report. The proposed committee bill specifies that the predisposition report shall be submitted to the court upon completion, but no later than 48 hours prior to the disposition hearing.

SECTION 6.

The proposed committee bill amends subsection (2) of s. 985.23, F.S., which relates to disposition hearings in delinquency cases. Section 985.23(1)(d), F.S., requires the court to allow all parties present at the disposition hearing an opportunity to comment on the issue of disposition and any proposed rehabilitative plan. At the recommendation of the Workgroup, the proposed committee bill amends subsection (2) of s. 985.23, F.S., for purposes of consistency with case law and the provisions of s. 985.23(1)(d), F.S. See id. The proposed committee bill requires that the court's disposition determination include consideration of DJJ's recommendations, which may include a predisposition report. If the court elects to dispose of the case in a manner differing from DJJ's recommendation, the proposed committee bill requires the court to state the reasons for doing so on the record. The proposed committee bill allows the court to make recommendations to DJJ as to specific treatment approaches to be employed.

SECTION 7.

The proposed committee bill amends paragraph (d) of subsection (1) of s. 985.231, F.S., which relates to the court's powers of disposition in delinquency cases. Section 985.231(1)(d), F.S., provides that any commitment of a delinquent child must be for an indeterminate period of time. The Workgroup recommended amending this section for clarification purposes. See id.

In amending paragraph (d), the proposed committee bill specifies that the duration of a child's placement in a residential commitment program is to be determined by objective performance-based treatment planning. The length of stay in a program may be extended if a child fails to comply with or participate in treatment activities; however, the length of stay may not be extended as a sanction or punishment. These amendments are consistent with current DJJ policy and should not require any change in practice for programs. DJJ anticipates that treatment plans will be developed by treatment teams rather than individual programs. Information developed through predisposition reports and comprehensive evaluations will be available to the treatment teams for purposes of formulating treatment plans. DJJ anticipates that performance objectives based on treatment plans will be developed by the programs.

The proposed committee bill requires that the child's treatment plan progress be reported to the court each month. Such a report is also required when release from a residential commitment program is requested. Court approval is required for any temporary release of a child from a residential commitment program. However, youth committed to low risk residential programs are allowed to have unsupervised community access pursuant to the proposed committee bill. To avoid confusion and inconsistency, it may be appropriate to further specify the temporary release provisions relative to the residential commitment levels and public safety concerns.

SECTION 8.

The proposed committee bill amends s. 985.404, F.S., which relates to the administration of the juvenile justice continuum. The proposed committee bill provides statutory authority for a Classification and Placement Workgroup. This amendment was recommended by the current Workgroup assembled at the request of the House Committee on Juvenile Justice to examine the present classification and placement systems.

The current Workgroup reached a consensus on several commitment and placement issues. Additional considerations were identified by the Workgroup as pertinent to commitment and placement; however, no consensus was reached with regard to recommendations. The proposed committee bill authorizes the continued efforts of the Workgroup to consider pertinent issues and make recommendations concerning the development of a system for classifying and placing juvenile offenders who are committed to residential programs in a report to the Governor and Legislature is due no later than September 30, 2001. The Workgroup will also recommend a process for testing and validating the effectiveness of the recommended classification and placement system.

SECTION 9.

Provides an effective date of January 1, 2001.

III. **FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. **FISCAL IMPACT ON STATE GOVERNMENT:**

1. **Revenues:**

None

2. **Expenditures:**

The department projects an impact of \$2,210,085 for FY 2000-01 and \$2,946,780 for FY 2001-02. The department proposes to cover these costs by reprogramming a portion of the \$4.5 million associated with Juvenile Assignment Centers. Statutory authority for the assignment centers expires on June 30, 2000.

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

1. **Revenues:**

None.

2. **Expenditures:**

None.

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

None.

D. **FISCAL COMMENTS:**

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of municipalities or counties to raise revenues in the aggregate.

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

The bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Lori Ager

Staff Director:

Lori Ager

STORAGE NAME: h1759.cj

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PAGE 11

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Prepared by:

Staff Director:

James P. DeBeaugrine

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