

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PSDS 09-01 Juvenile proceedings
SPONSOR(S): Public Safety & Domestic Security Policy Committee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Public Safety & Domestic Security Policy Committee, ANALYST: Padgett, STAFF DIRECTOR: Kramer. Rows 2-6 are empty.

SUMMARY ANALYSIS

Section 985.033(1), F.S. provides that juveniles have the right to counsel at all stages of delinquency proceedings. The juvenile may waive the right to counsel, but such waiver must be freely, knowingly, and intelligently waived by the juvenile.

Rule 8.165(a), Florida Rules of Juvenile Procedure requires the court to advise a child of the child's right to counsel, and to appoint counsel as provided by law unless the right is waived by the child.

On May 1, 2008, in a 4-3 decision, the Florida Supreme Court amended Florida Rule of Juvenile Procedure 8.165(a).1 The amendment provides:

Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.2

The Florida Supreme Court stated "that consultation with an attorney prior to waiving counsel is an important and necessary procedural safeguard designed to protect a juvenile's constitutional right to counsel."

The dissenting opinion agreed that the problem of juveniles waiving the right to counsel was significant.3 However, the dissent argued that the requirement of a prewaiver consultation with counsel was a substantive, and not a procedural, right.4 As a result, the dissent argued the court does not have the authority to create such a right. The dissent recommended the court continue to seek legislative changes in statutory law, and to encourage voluntary compliance with the proposed amendment.

The bill repeals Rule 8.165(a), Florida Rules of Juvenile Procedure, relating to the duty of the court to advise a juvenile of the right to counsel and to appoint counsel to juvenile defendants in delinquency cases.

1 Id. at 9.

2 Id. See Appendix.

3 Id. at 9.

4 Id. The differences between procedural and substantive rights are discussed in greater detail in the "Constitutional Issues" comments below.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb01.PSDS.doc

DATE: 3/2/2009

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 985.033(1), F.S. provides that juveniles have the right to counsel at all stages of delinquency proceedings. The juvenile may waive the right to counsel, but such waiver must be freely, knowingly, and intelligently waived by the juvenile.<sup>5</sup>

Article V, Section 2(a), of the Florida Constitution provides authority to the supreme court to adopt rules for the practice and procedure in all Florida courts.<sup>6</sup> Rules of court adopted by the supreme court may be repealed by a general law requiring a two-thirds vote of the membership of each house of the legislature.<sup>7</sup>

Rule 8.165(a), Florida Rules of Juvenile Procedure requires the court to advise a child of the child's right to counsel, and to appoint counsel as provided by law unless the right is waived by the child.

In 2004, the Florida Supreme Court considered several amendments to the Florida Rules of Juvenile Procedure.<sup>8</sup> One proposed amendment to Rule 8.165 required a child to be given a meaningful opportunity to confer with an attorney before waiving counsel in a delinquency proceeding.<sup>9</sup> The court declined to adopt the amendment to the rule, citing the possible financial impact of the amendment and the court's desire to work with the Florida Legislature to enact statutory changes which would adopt the language of the proposed amendment.<sup>10</sup> The court emphasized that they were not rejecting the amendment outright, but deferring action on the proposed amendment until a later date.<sup>11</sup>

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<sup>5</sup> Section 985.033(1), F.S.

<sup>6</sup> Article V, Sec. 2(a), Fla. Const.

<sup>7</sup> Id.

<sup>8</sup> Amendments to Fla. Rules of Juv. Pro., 894 So.2d 875 (Fla. 2005).

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

In 2007, the proposed amendment requiring juveniles to be able to confer with counsel before waiving the right to counsel was resubmitted to the supreme court for consideration.<sup>12</sup>

On May 1, 2008, in a 4-3 decision, the Florida Supreme Court amended Florida Rule of Juvenile Procedure 8.165(a).<sup>13</sup> The amendment provides:

Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.<sup>14</sup>

The Florida Supreme Court stated "that consultation with an attorney prior to waiving counsel is an important and necessary procedural safeguard designed to protect a juvenile's constitutional right to counsel."<sup>15</sup> The court noted that since the amendment was first proposed in 2004, several bills which codified identical language to the amendment were filed in the legislature, all of which failed to pass.<sup>16</sup> In addition, the court noted that the staff analysis for the proposed legislation indicated proposed language identical to the rule being considered by the court would have a minimal fiscal impact.<sup>17</sup>

The dissenting opinion agreed that the problem of juveniles waiving the right to counsel was significant.<sup>18</sup> However, the dissent argued that the requirement of a prewaiver consultation with counsel was a substantive, and not a procedural, right.<sup>19</sup> As a result, the dissent argued that the court does not have the authority to create such a right. The dissent recommended the court continue to seek legislative changes in statutory law, and to encourage voluntary compliance with the proposed amendment.<sup>20</sup>

### Proposed Changes

The bill repeals Rule 8.165(a), Florida Rules of Juvenile Procedure, relating to the duty of the court to advise a juvenile of the right to counsel and to appoint counsel to juvenile defendants in delinquency cases.

#### B. SECTION DIRECTORY:

Section 1: Repeals Rule 8.165(a), Florida Rules of Juvenile Procedure.

Section 2: Provides the bill takes effect upon becoming law if the bill is enacted by a two-thirds vote of the membership of each house of the legislature.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

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<sup>12</sup> In Re: Amendment to Florida Rule of Juvenile Procedure 8.165(a), SC07-1162 (Fla. S. Ct. May 1, 2008).

<sup>13</sup> Id. at 9.

<sup>14</sup> Id. See Appendix.

<sup>15</sup> Id. at 8-9.

<sup>16</sup> Id. at 6.

<sup>17</sup> Id.

<sup>18</sup> Id. at 9.

<sup>19</sup> Id. The differences between procedural and substantive rights are discussed in greater detail in the "Constitutional Issues" comments below.

<sup>20</sup> Id. at 11-15.

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Florida Constitution provides that “[t]he supreme court shall adopt rules for the practice and procedure in all courts”.<sup>21</sup> The separation of powers provision of the state constitution prohibits one branch of government from exercising a power given to another branch.<sup>22</sup> According to the constitution, a rule of court “may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.” The constitution does not grant the Legislature the authority to replace the repealed rule with a legislative enactment. The constitution also does not preclude the Supreme Court from reenacting a rule that is similar or identical to one that the Legislature has repealed.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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<sup>21</sup> Art. V, Section 2(a), Fla. Const.

<sup>22</sup> Art. II, Section 3, Fla. Const.