

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PSDS 10-02 Department of Juvenile Justice
SPONSOR(S): Public Safety & Domestic Security Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The PCB makes various changes to Chapter 985, F.S., relating to juvenile justice, as well as changes to the “Children and Families in Need of Services” (CINS/FINS) statute and the “Comprehensive Child and Adolescent Mental Health Services Act.” Specifically, the PCB:

- Amends the definition of “child or adolescent at risk of emotional disturbance” to include the additional risk factor of “being 9 years of age or younger at the time of referral for a delinquent act.” This change will expand the pool of persons eligible to receive treatment services through the child and adolescent mental health system of care.
- Provides changes to the “child in need of services” and “families in need of services” definitions to allow youth 9 year of age or younger who have been referred to the Department of Juvenile Justice (Department) to be served by the CINS/FINS network.
- Permits a child who has been taken into custody for a misdemeanor domestic violence charge to be placed in a shelter prior to a court hearing.
- Promotes the use of restorative justice practices to support victims of juvenile delinquency;
- Encourages specified entities to establish prearrest/postarrest diversion programs and provides that youth 9 years of age or younger should be given the opportunity to participate in such programs.
- Requires juvenile probation officers to make a referral to the appropriate CINS/FINS shelter if a child taken into custody for a domestic violence offense is ineligible for secure detention.
- Requires the Department to independently validate the detention risk assessment instrument and adds two child advocates to the committee responsible for developing the risk assessment instrument.
- Authorizes the court to commit a child who has been adjudicated delinquent to the Department for placement in a mother-infant program.
- Requires the Department to submit an annual Comprehensive Accountability Report to the Governor and Legislature detailing the effectiveness of Department programs.

The PCB takes effect upon becoming a law and does not appear to have a fiscal impact.

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

STORAGE NAME: pcb02.PSDS.doc
DATE: 2/22/2010

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:

Child and Adolescent Mental Health System of Care – Eligibility

Chapter 394, F.S., entitled the “Comprehensive Child and Adolescent Mental Health Services Act,” requires the Department of Children and Families (DCF) to establish a child and adolescent mental health system of care that provides array of services to meet the individualized service and treatment needs of children¹ and adolescents² who are members of specified target populations. Currently, only individuals who fall within the following categories are eligible to be served through the child and adolescent mental health system of care:

- Children and adolescents who are experiencing an acute mental or emotional crisis.
- Children and adolescents who have a serious emotional disturbance or mental illness.
- Children and adolescents who have an emotional disturbance.
- Children and adolescents who are at risk of emotional disturbance.³

Section 394.492(4), F.S., currently defines a “child or adolescent at risk of emotional disturbance” as a person under 18 years of age who has an increased likelihood of becoming emotionally disturbed because of risk factors that include, but are not limited to:

- Being homeless.
- Having a family history of mental illness.
- Being physically or sexually abused or neglected.
- Abusing alcohol or other substances.
- Being infected with human immunodeficiency virus (HIV).
- Having a chronic and serious physical illness.
- Having been exposed to domestic violence.
- Having multiple out-of-home placements.

Effect of the PCB

The PCB amends the definition of “child or adolescent at risk of emotional disturbance” to include the additional risk factor of “being 9 years of age or younger at the time of referral for a delinquent act.” This change will expand the pool of persons eligible to receive treatment services through the child and adolescent mental health system of care.

¹ Section 394.492, F.S., defines the term "child" as “a person from birth until the person's 13th birthday.”

² Section 394.492, F.S., defines the term “adolescent” as “a person who is at least 13 years of age but under 18 years of age.”

³ Each of these groups is defined in s. 394.492, F.S.

Children and Families in Need of Services - Definitions

The Department of Juvenile Justice's (Department) CINS/FINS network provides services and treatment to children and families in need of services that are designed to preserve the integrity and unity of the family.⁴ Such services and treatment include, but are not limited to, parent training, runaway center services, intensive crisis counseling, and placement in a staff-secure shelter. To be eligible for such services and treatment, a child or family must first meet the definition of a "child in need of services" or a "family in need of services."

Section 984.03(9), F.S., currently defines the term "child in need of services" as:

A child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Children and Family Services for an adjudication of dependency or delinquency. The child must also be found by the court:

- To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services;
- To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation pursuant to ss. 1003.26 and 1003.27 and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services; or
- To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.

Section 984.03(25), F.S., currently defines the term "family in need of services" as:

A family that has a child who is running away; who is persistently disobeying reasonable and lawful demands of the parent or legal custodian and is beyond the control of the parent or legal custodian; or who is habitually truant from school or engaging in other serious behaviors that place the child at risk of future abuse, neglect, or abandonment or at risk of entering the juvenile justice system. The child must be referred to a law enforcement agency, the Department of Juvenile Justice, or an agency contracted to provide services to children in need of services. A family is not eligible to receive services if, at the time of the referral, there is an open investigation into an allegation of abuse, neglect, or abandonment or if the child is currently under supervision by the Department of Juvenile Justice or the Department of Children and Family Services due to an adjudication of dependency or delinquency.

The above definitions currently exclude children who have a pending referral to the Department from being served by the CINS/FINS network. The Department reports that 498 children age 9 or younger were referred to the Department during FY 08-09. As such, these youth were excluded from being served through the CINS/FINS network.

⁴ See ch. 984, F.S.

Effect of the PCB

The PCB amends the definitions of “child in need of services” and “family in need of services” in s. 984.03, F.S., to include youth who are 9 years of age or younger who have a delinquency referral. As a result, these youth will be able to receive CINS/FINS services even though they have an active referral to the Department.

The PCB makes the same changes to the definitions of “child in need of services” and “family in need of services” in the delinquency statute, s. 985.03(7), F.S.

Shelter Placement

Section 984.13, F.S., provides that a child may be taken into custody:

- By a law enforcement officer when the officer has reasonable grounds to believe that the child has run away from his or her parents, guardian, or other legal custodian;
- By a law enforcement officer when the officer has reasonable grounds to believe that the child is absent from school without authorization or is suspended or expelled and is not in the presence of his or her parent or legal guardian, for the purpose of delivering the child without unreasonable delay to the appropriate school system site;
- Pursuant to an order of the circuit court based upon sworn testimony before or after a petition seeking an adjudication that a child is a child in need of services is filed; or
- By a law enforcement officer when the child voluntarily agrees to or requests services pursuant to this chapter or placement in a shelter.

Section 984.14, F.S. provides that unless ordered by the court or upon voluntary consent by the child and the child's parent, legal guardian, or custodian, a child taken into custody shall not be placed in a shelter⁵ prior to a court hearing unless a determination has been made that the provision of appropriate and available services will not eliminate the need for placement and that such placement is required:

- To provide an opportunity for the child and family to agree upon conditions for the child's return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an agreement; or
- Because a parent, custodian, or guardian is unavailable to take immediate custody of the child.

Effect of the PCB

The PCB amends s. 984.14, F.S. to add that a child may also be placed into custody prior to a court hearing if the child is taken into custody for a misdemeanor domestic violence charge and is ineligible to be placed in secure detention.⁶ The Department reports that there were 7,263 children with misdemeanor domestic violence-related offenses referred to the Department in FY 08-09. The PCB allows these children to be placed in a shelter prior to a court hearing rather than being placed back into the home where the domestic violence allegedly occurred.

⁵ Section 984.03(39), F.S., defines the term “shelter” as “a place for the temporary care of a child who is alleged to be or who has been found to be dependent, a child from a family in need of services, or a child in need of services, pending court disposition before or after adjudication or after execution of a court order. “Shelter” may include a facility which provides 24-hour continual supervision for the temporary care of a child who is placed pursuant to s. 984.14.”

⁶ Section 984.03(18), F.S., defines the term “secure detention” as “temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.”

Legislative Intent

Section 985.02, F.S., sets forth the legislature's intent for the juvenile justice system. The PCB creates two new subsections under s. 985.02, F.S., entitled "children nine years of age or younger" and "restorative justice." The new subsections provide the following:

- Children 9 Years of Age or Younger
 - o The Legislature finds that very young children need age-appropriate services in order to prevent and reduce future acts of delinquency. Children who are 9 years of age or younger should be diverted into prearrest or postarrest programs, civil citations programs, or child-in-need-of-services and families-in-need-of-services programs, or other programs as appropriate. If, upon findings from the needs assessment, the child is found to be in need of mental health services or substance abuse treatment services, the department shall cooperate with the parent or legal guardian and the Department of Children and Family Services, as appropriate, to identify the most appropriate services and supports and available funding sources to meet the needs of the child.⁷

- Restorative Justice
 - o It is the intent of the Legislature that the juvenile justice system advance the principles of restorative justice. The department should focus on repairing the harm to victims of delinquent behavior, ensuring the youth understands the impact of their delinquent behavior on the victim and the community, and restoring the loss to the victim.
 - o Offender accountability is one of the basic principles of restorative justice. The premise of this principle is that the juvenile justice system must respond to delinquent behavior in such a way that the offender is made aware of and takes responsibility for repaying or restoring loss, damage, or injury perpetrated upon the victim and the community. This goal is achieved when the offender understands the consequences of delinquent behaviors in terms of harm to others; and when the offender makes amends for the harm, loss or damage through restitution, community services or other appropriate payment.

Pre-Arrest and Post-Arrest Diversion Programs

Section 985.125, F.S., allows a law enforcement agency or a school district, in cooperation with the state attorney, to create a prearrest or postarrest diversion program for children who have committed or been alleged to have committed a delinquent act. Diversion is a process designed to keep a youth from entering the juvenile justice system through the legal process. Diversion programs include community arbitration, Juvenile Alternative Services Program (JASP), teen court, civil citation, boy scouts and girl scouts, boys and girls clubs, mentoring programs, and alternative schools.

Effect of the PCB

The PCB adds counties, municipalities, and the DJJ to the list of entities that may establish prearrest and postarrest diversion programs. It also specifies that youth 9 years of age or younger should be given the opportunity to participate in a prearrest or postarrest diversion program.

Intake

Section 985.14, F.S., requires the Department to develop an intake system whereby a child brought into intake is assigned a juvenile probation officer. The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child's programmatic needs and risks. The intake process is performed by the Department through a case

⁷ The Department reports that it communicates with DCF regularly about youth who are served by both agencies. According to a FY 07-8 analysis of youth IDs, DCF had contact with approximately 30 percent of the youth age 9 and younger who were referred to the Department for a delinquent act.

management system, and a child's assigned juvenile probation officer serves as the primary case manager.⁸

Currently, s. 985.145(1)(d), F.S., requires a child's juvenile probation officer to ensure that a risk assessment instrument that establishes the child's eligibility for detention has been completed and that the appropriate recommendation was made to the court.

Effect of the PCB

The PCB amends s. 985.145(1)(d), F.S. to add that juvenile probation officers must make a referral to the appropriate CINS/FINS shelter if a child is ineligible for secure detention due to a misdemeanor charge of domestic violence when the child lives with a family with a history of domestic violence or has been a victim of abuse or neglect.

Detention – Initial Assessment

Section 985.24, F.S., provides criteria used in determining if a child alleged to have committed a delinquent act qualifies for detention. Subsection (2) of the statute specifies that a child alleged to have committed a delinquent act may not be placed in detention for any of the following reasons:

- To allow a parent to avoid his or her legal responsibilities;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or
- Due to a lack of appropriate facilities.

Effect of the PCB

The PCB amends s. 985.24(2), F.S., by adding the following reason to the above list:

- Due to a misdemeanor charge of domestic violence when the child lives with a family with a history of domestic violence or has been a victim of abuse or neglect, and the decision to place in secure detention is mitigated by the history of trauma faced by the child, unless the youth would otherwise score for secure detention based on prior history.

The PCB also provides children 9 years of age or younger not be placed into secure detention unless the child is charged with a capital felony, life felony, or a first degree felony.

Risk Assessment Instrument

Section 985.245, F.S., requires a detention risk assessment instrument to be developed by the Department in agreement with representatives appointed by the following associations:

- Conference of Circuit Judges of Florida
- Prosecuting Attorneys Association
- Public Defenders Association
- Florida Sheriff's Association
- Florida Association of Chiefs of Police

Effect of the PCB

The PCB amends s. 985.245, F.S., to provide that the risk assessment instrument be developed by the Department in agreement with a committee composed of two representatives from the above-listed association, as well as two representatives from child advocacy organizations appointed by the Secretary of the Department.

Additionally, the PCB amends s. 985.245, F.S., to require that the risk assessment instrument be independently validated. The PCB requires the Department to review the population, policies and procedures impacting the use of detention every seven years to determine the necessity of revalidating

⁸ See ss. 985.14 and 985.145, F.S.

the instrument, and specifies that validation is assessing the effectiveness of the instrument's ability to measure the risk of new offending and failure to appear for court proceedings.

Continued Detention

Section 985.255, F.S. provides criteria the court may use in determining whether to continue to detain a child prior to a detention hearing. Section 985.255(1)(d), F.S. provides the court may continue to detain a child if the child is charged with domestic violence. Additionally, subsection (2) of the statute provides that a child who is charged with committing an offense of domestic violence and who does not meet detention criteria may be held in secure detention if the court makes specific findings.

Effect of the PCB

The PCB amends s. 985.255(1)(d), F.S. to provide the court may consider only whether the child is charged with *felony* domestic violence when determining whether to continue to detain a child prior to a detention hearing. The PCB also amends subsection (2) of the statute to specify that a child who is charged with committing a *felony* offense of domestic violence and who does not meet detention criteria may be held in secure detention if the court makes specific findings.

Juvenile Justice Circuit Boards

Section 985.664, F.S., authorizes the creation of a juvenile justice circuit board in each of the 20 judicial circuits and a juvenile justice county council in each of the 67 counties. The purpose of each juvenile justice circuit board and each juvenile justice county council is to provide advice and direction to the Department in the development and implementation of juvenile justice programs and to work collaboratively with the Department in seeking program improvements and policy changes to address the emerging and changing needs of Florida's youth who are at risk of delinquency.⁹

Generally, membership of the circuit board may not exceed 18 members.¹⁰ However, s. 985.664(8), F.S., permits a juvenile justice circuit board to revise its bylaws to increase the number of members by no more than three in order to adequately reflect the diversity of the population and community organizations or agencies in the circuit.

Effect of the PCB

The PCB amends s. 985.664(8), F.S., to expand the number of additional members that may be added to the juvenile justice circuit boards to adequately reflect the community diversity from 3 to 5.

Commitment – Mother-Infant Programs

Section 985.441, F.S., authorizes a court that has jurisdiction of an adjudicated delinquent child to commit the child to:

- A licensed child-caring agency willing to receive the child
- The Department at a restrictiveness level defined in s. 985.03, F.S.
- The Department for placement in a program/facility for serious or habitual juvenile offenders
- The Department for placement in a program or facility for juvenile sexual offenders

The Department currently operates a 20-bed mother-infant program in Miami-Dade county that serves pregnant and postpartum females ages 14-19. The goal of the program is to return the women back to their communities with skills necessary to lead productive lives and successfully parent their children. At this time, there is no statutory provision allowing a court to commit a child who has been adjudicated delinquent to a mother-infant program.

⁹ s. 985.664(1), F.S.

¹⁰ s. 985.664(7), F.S. In certain instances, the circuit board may exceed 18 members. See s. 985.664(8) and (9), F.S.

Effect of the PCB

The PCB amends s. 985.441, F.S., to authorize the court to commit a child to the Department for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents. The PCB requires the Department's mother-infant program to be licensed as a childcare facility under s. 402.308, F.S., and requires the program to provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of the infants who, upon agreement of the mother, may accompany them in the program. The PCB also requires the Department to adopt rules to govern the program.

Comprehensive Accountability Report

Legislative Intent

Section 985.632(1), F.S., provides that it is the intent of the Legislature that the Department:

- Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs of the department which achieve desired performance levels.
- Provide information about the cost of such programs and their differential effectiveness so that the quality of such programs can be compared and improvements made continually.
- Provide information to aid in developing related policy issues and concerns.
- Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.
- Provide a basis for a system of accountability so that each client is afforded the best programs to meet his or her needs.
- Improve service delivery to clients.
- Modify or eliminate activities that are not effective.

Effect of the PCB

The PCB adds to the above list that it is the intent of the Legislature that the Department collect and analyze available statistical data for the purpose of ongoing evaluation of all programs.

The PCB also deletes the definition of the term "program effectiveness" and creates the following definitions in s. 985.632(2), F.S.:

- "Program" means any facility, service, or program for youth that is operated by the department or by a provider under contract with the department.
- "Program group" means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison among programs within the group.

Comprehensive Accountability Report

Currently, s. 985.632(3), F.S., requires the Department to annually collect and report cost data for every program operated or contracted by the Department. The cost data must conform to a format approved by the Department and the Legislature and shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The statute also requires the Department to ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. Further, the Department must submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year.

Effect of the PCB

The PCB deletes s. 985.632(3), F.S., in its entirety and replaces it with language requiring the Department to:

- Use a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group.
- Submit a Comprehensive Accountability Report to the appropriate substantive and fiscal committees of the Legislature and the Governor no later than January 15 of each year.

- Notify the Office of Program Policy Analysis and Government Accountability (OPPAGA) and contract service providers of substantive changes to the methodology.

The PCB specifies that the standard methodology must:

- Incorporate, whenever possible, performance-based budgeting measures/
- Include common terminology and operational definitions for measuring the performance of system and program administration, program outputs, and youth outcomes.
- Specify program outputs for each program and for each program group within the juvenile justice continuum.
- Specify desired youth outcomes and methods by which to measure youth outcomes for each program and program group.

Cost-Effectiveness Model

Section 985.632(4), F.S., currently requires the Department to develop a cost-effectiveness model and apply it to each commitment program. The statute also requires the Department to rank commitment programs based on the cost-effectiveness model and submit a report to specified entities. The Department is also required to develop a work plan to refine the cost-effectiveness model so that the model is consistent with the performance based program budgeting measures approved by the legislature to the extent the Department deems appropriate.

Effect of the PCB

The PCB makes several amendments to s. 985.632(4), F.S. The amendments:

- Require the Department to include the results of the cost-effectiveness model in the Comprehensive Accountability Report.
- Remove the language requiring the Department to rank commitment programs based on the cost-effectiveness model.
- Replaces the language requiring the Department to develop a work plan to refine the cost-effectiveness model with language requiring the Department to notify OPPAGA and contract service providers of substantive changes to the cost-effectiveness model.

Quality Assurance

Section 985.632(5), F.S., requires the Department to establish a comprehensive quality assurance system for each program operated by the Department or operated by a provider under contract with the Department. The statute also requires the Department to submit an annual report relating to quality assurance to specified entities. The annual report must include specified information about each program component.

Effect of the PCB

The PCB removes the requirement that the Department submit the annual quality assurance report and instead requires the Department to include quality assurance information in the Comprehensive Accountability Report.

Obsolete Reporting Requirement

The PCB removes an obsolete requirement that the Department submit a proposal to the Legislature by November 1, 2001 concerning funding incentives and disincentives for the Department and for providers under contract with the Department.

B. SECTION DIRECTORY:

Section 1. Amends s. 394.492, F.S., relating to definitions.

Section 2. Amends s. 984.03, F.S., relating to definitions.

Section 3. Amends s. 984.14, F.S., relating to shelter placement; hearing.

Section 4. Amends s. 985.02, F.S., relating to legislative intent for juvenile justice system.

Section 5. Amends s. 985.03, F.S., relating to definitions.

Section 6. Amends s. 985.125, F.S., relating to prearrest or postarrest diversion programs.

Section 7. Amends s. 985.145, F.S., relating to responsibilities of juvenile probation officer during intake; screenings and assessments.

Section 8. Amends s. 985.24, F.S., relating to use of detention; prohibitions.

Section 9. Amends s. 985.245, F.S., relating to risk assessment instrument.

Section 10. Amends s. 985.255, F.S., relating to detention criteria; detention hearing.

Section 11. Amends s. 985.664, F.S., relating to juvenile justice circuit boards and juvenile county councils.

Section 12. Amends s. 985.441, F.S., relating to commitment.

Section 13. Amends s. 985.632, F.S., relating to quality assurance and cost-effectiveness.

Section 14. Amends s. 985.45, F.S., relating to liability and remuneration for work.

Section 15. This PCB takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Juvenile Justice reports that this bill will not have a fiscal impact.

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:

None.

B. RULE-MAKING AUTHORITY:

The PCB authorizes the Department to adopt rules pursuant to ch. 120, F.S., to govern operation of mother-infant programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES