

STORAGE NAME: h4193z.jj
DATE: June 26, 1998

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

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUVENILE JUSTICE
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4193
RELATING TO: Juveniles/Criminal Offenses
SPONSOR(S): Representative Murman
COMPANION BILL(S): SB 2008

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

- (1) JUVENILE JUSTICE YEAS 5 NAYS 1
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

HB 4193 did not pass the 1998 Legislative session. See Comments for bill history.

II. SUMMARY:

The bill makes numerous changes in juvenile and criminal justice procedures for juvenile offenders in both the juvenile and adult systems. Provisions include:

- making all juvenile court records public, expanding provisions for the retention of juvenile records, and merging such records with a person's adult criminal record for adult sentencing purposes;
- allowing a witness to be impeached on the basis of an adjudication of delinquency to the same extent as allowed for adult convictions;
- permitting the detention of up to 14 days for juvenile offenders who fail to appear for arraignment or for a hearing on a violation of supervision unless they qualify for a longer detention stay;
- adding attempts to commit an offense for purposes of transferring juvenile offenders to adult court by mandatory and discretionary waiver hearings and direct file procedures;
- striking the current mandatory transfer provision for a juvenile offender who has three (3) prior separate adjudications for felonies with each resulting in placement in a DJJ residential commitment facility;
- providing a new mandatory direct file provision and mandatory adult sentencing where a juvenile offender (age 16 or 17) has three (3) prior felony adjudications or adjudications withheld or six (6) misdemeanors or any combination of six (6) offenses or technical violations of supervision, each act separated in time by 45 days or more from each other;
- providing for mandatory direct filing and the imposition of adult sanctions for juvenile offenders (age 14 and older) transferred for a felony or misdemeanor offense and the offender has a prior adjudication of delinquency for murder, sexual batter, robbery, car jacking, home invasion, aggravated battery or assault, and has been charged with a second violent offense;
- permitting the adult court judge to sentence a juvenile offender discretionarily transferred to adult court to DOC community supervision and as a condition of supervision place the offender in a DJJ residential commitment facility and requiring the imposition of other adult sanctions should the offender fail to complete the DJJ program;
- creating early intervention boot camps for youth 12 years of age or older who have no more than 2 prior felony cases nor more than 4 prior misdemeanor cases for a length of stay in the boot camp of no less than 10 days with 2 months of aftercare; and
- requiring DJJ's cost-benefit report to include specific cost and recidivism data.

Both DJJ and DOC are preparing DOC prison bed, DJJ detention and commitment bed, DOC community supervision, and fiscal impacts for an April 9, 1998 Criminal Justice Impact Conference meeting on this bill. Preliminary and tentative estimates based on DJJ data indicate a range of between \$62 million and \$123 million for the blended sentencing provisions of this bill and about \$3 million for the bill's failure-to-appear detention provision.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Juvenile Records - According to the model Standard Juvenile Court Act of 1959 developed by the National Council on Crime and Delinquency and used by many states:

“The privacy of the [juvenile court] hearing contributes to a casework relationship and [an] avoidance of the spectacle of a public criminal trial [which] is especially advantageous in children’s cases. [Although] the hearing is private, [it is] not secret. [Any] reference to persons who have “a direct interest in the work of the court” includes newspaper reporters who should be permitted, indeed, encouraged to attend hearings with the understanding that they will not disclose the names or other identifying data of the participants.”¹

The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) reports that many states have weighed and are continuing to weigh the value of maintaining the confidentiality of juvenile records against the opening of juvenile records, and, in effect, treating juvenile records much like adult criminal records. In doing so, states weigh the protection of juvenile offenders against the protection of the community and the right to privacy versus the right to know.²

In a OJJDP report entitled Responses to Serious and Violent Juvenile Crime (1996), a summary is presented of current confidentiality provisions relating to serious or violent juvenile offenders in the states. Many states have opened juvenile court proceedings to the public for either crimes generally or for only violent or serious crimes. Also, many states now permit the publication of a minor’s name and address if the minor was adjudicated delinquent for specified serious or violent crimes or repeat offenses. In the OJJDP report, the following information is presented:

- (1) 22 states have open hearings
- (2) 39 states allow the release of juvenile names for certain offenses
- (3) 45 states allow the release of court records under specified conditions
- (4) 50 states allow the fingerprinting of juveniles
- (5) 50 states allow the photographing of juveniles
- (6) 44 states maintain a statewide repository of juvenile records

The Department of Juvenile Justice (DJJ), the courts, and the Florida Department of Law Enforcement (FDLE) are the primary agencies that maintain juvenile offender records. The DJJ may not destroy records for youth found guilty of committing a delinquent act except upon the death of a youth or with regard to applicability of age requirements. But those juvenile records are sealed by the court of jurisdiction and may be accessed in cases such as employment screening or by rules of the DJJ. The public may not inspect juvenile records maintained by the DJJ without first receiving authorization from the

¹ National Council on Crime and Delinquency. Standard Juvenile Court Act, Sixth Edition. New York: NCCD, 1959

² Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, *State Responses to Serious and Violent Juvenile Crime* (1996).

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Secretary of DJJ or his authorized agent. Disclosure is prohibited until sufficient reason is established and the conditions for their use is approved. [s. 985.05, F. S.]

Section 985.04, F.S., stipulates that any juvenile record information collected by the following authorized agents and agencies in the discharge of official duty must remain confidential:

- a judge or employee of the court
- an authorized agent of the DJJ
- the Parole Commission
- the Juvenile Justice Advisory Board (JJAB)
- the Department of Corrections
- district juvenile justice boards
- any law enforcement agent
- any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile

The information may be disclosed to the authorized personnel of the above mentioned organizations or agencies or persons entitled to receive juvenile information. In addition, the information may be disclosed upon an order of the court.

The DJJ and the clerk of the court maintain juvenile records until a youth reaches age 24 or age 26 for serious or habitual delinquent offenders. Records are not destroyed until five years after the last entry or until three years after the death of a youth.

Chapter 943, F.S., authorizes the FDLE to maintain criminal history records of adults and juveniles. Minors charged with or found to have committed an offense that would be a felony if committed by an adult are fingerprinted and the fingerprints submitted to the FDLE. In addition, any minor charged with or found to have committed the following misdemeanors is fingerprinted and the fingerprints are sent to FDLE:

- assault
- battery
- carrying a concealed weapon
- unlawful use of destructive devices or bombs
- negligent treatment of children
- assault or battery on a law enforcement officer, a firefighter or other specified officers as defined in s. 784.07(2) (a) and (b), F.S., relating to assault or battery of public officers and employees and other specified persons
- open carrying of a weapon
- exposure of sexual organs
- unlawful possession of a firearm
- petit theft
- cruelty to animals
- arson

Criminal history information is made available on a priority basis to criminal justice agencies for criminal justice purposes free of charge. Non-criminal justice agencies can receive record information at cost. Criminal records information is also provided to persons in the private sector for the cost of producing the record information. The

information may be used only for the purpose stated in the original request. [s. 943.053, F. S.]

FDLE retains the criminal history of a minor classified as a serious or habitual juvenile offender for five year after the date the offender reaches age 21. Records of minors not classified as serious or habitual offenders are retained for five years after a minor reaches age 19. The records are expunged unless a person 18 years of age or older is charged with or convicted of a forcible felony and the person's juvenile record has not been destroyed. The person's adult criminal history record must be merged with the juvenile record and be retained as the person's adult record. A person's juvenile record is not expunged if a minor is adjudicated as an adult for a forcible felony. The minor's criminal history record prior to the time of the minor's adjudication as an adult must be merged with his adult record. [s. 985.0515, F. S.]

Juvenile records are used during sentencing in adult criminal cases. However, other uses of a juvenile's record is limited. For example, evidence of juvenile adjudications cannot be used to attack the credibility of a witness in adult proceedings. The credibility of a witness may be attacked if evidence is shown that the witness was convicted of a crime that was punishable either by death or imprisonment exceeding one year under the law under which the witness was convicted, or if the crime involved dishonesty or a false statement. [s. 90.610, F. S.]

A DJJ juvenile record consists of legal and social information. Legal information consists of charges, offenses, court petitions, complaints, motions, transcripts of testimony, findings, orders, decrees, and other information introduced and accepted as evidence. Social information generally includes reports received or prepared by the intake counselor or case manager such as past behavior, family background, and results of screenings and evaluations. [ss. 985.04, 985.05 and 985.21, F. S.]

The courts maintain records of both legal and social information. However, the FDLE collects only fingerprints, photographs and related identifying information such as date of birth, address, and sex. This identifying information is combined with any charges and offenses that the FDLE is required to collect. [ss. 985.212 and 943.051, F. S.]

The information collected on juveniles becomes a prior arrest record. [s. 921.0011, F. S.] relating to sentencing guidelines, defines a prior record as a conviction for a crime committed by the offender, as an adult or a juvenile, prior to the time of the primary offense. Federal, out-of-state, military, foreign court convictions, and violations of county or municipal ordinances that incorporate by reference a penalty under state law, are included in an offender's prior record.

Juvenile dispositions of offenses committed by the offender within three years before the primary offense are included in the offender's prior record when the offense would have been a crime if committed by an adult. Juvenile dispositions of sexual offenses committed by the offender which were committed three years or more before the primary offense are included in the offender's prior record if the offender has not maintained a conviction-free record, either as an adult or a juvenile, for three consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense. Youths' prior records are subject to the confidentiality provisions of chapters 943 and 985, F. S.]

Use of Detention -- Section 985.03, F. S., defines secure detention centers as facilities designed for the temporary care of a child alleged or found to have committed a violation of law. Detention centers house youth awaiting an adjudicatory hearing or placement in a residential commitment facility following disposition.

There are currently 20 secure detention centers statewide with a capacity of 1,642 beds. According to DJJ, there were 2,003 youth in secure detention centers statewide on April 5, 1998. The statewide average utilization rate for secure detention centers as of April 5, 1998 was 122%. Utilization rates for secure detention centers range from 69% (Alachua Detention Center) to 180% (Escambia Detention Center).

The DJJ is statutorily required to develop a risk assessment instrument to determine whether youth being detained by authorized law enforcement personnel or by authorized DJJ staff are eligible for home, non-secure, or secure detention care. A detention hearing is held within 24 hours of detaining a youth to determine the existence of probable cause that a delinquent act was committed and to determine the need for continued detention. A court of jurisdiction may order a child placed in detention care prior to a detention hearing to continue to be held if one or more of the following criteria are met:

- a child is an escapee or an absconder
- a child is wanted for a felony charge in another jurisdiction
- a child requests to be detained for protection from imminent physical threat
- a child is charged with committing a domestic violence offense
- a child is charged with a life, capital or first degree felony or a second degree felony that does not involve a substance abuse violation or a third degree felony that is also a violent crime
- a child is charged with a second or third degree felony involving a substance abuse violation
- a child is charged with a third degree felony that is not a crime of violence and one or more of the following circumstances exists:
 - a record of failure-to-appear in court
 - a history of law violations prior to court hearings
 - a record of violent conduct resulting in physical injury to others
 - a child is found to have been in possession of a firearm
- a child is alleged to have violated the provisions of community control or aftercare

A youth may not be held for more than 21 days unless an adjudicatory hearing for the case has been commenced by the court of jurisdiction, nor may a youth be held in detention for more than 15 days following the entry of an order of adjudication.

Under the provisions of s. 985.215, F. S., youth committed to the DJJ and awaiting dispositional placement must be removed from detention care within five days of the original detainment. In addition, a court must place all children adjudicated and awaiting placement in a Level VIII or X residential commitment program in a secure detention center.

Methods of Transferring a Juvenile Offender to Adult Court -- According to an October 1997 publication by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) entitled *Juvenile Justice Reform Initiatives in the States: 1995-96*, all 50 states allow for juveniles to be transferred to adult court for criminal prosecution. The most common mechanism (47 states) is judicial waiver which gives the juvenile court judge, upon a motion by the prosecuting attorney, the discretion to waive juvenile cases to adult criminal court. Other transfer mechanisms include statutory exclusion (37 states) which mandates juvenile prosecution in adult court for selected serious offenses and direct file (10 states) which provides prosecutorial discretion for the filing of criminal charges against juveniles in adult court.

Under current Florida law, there are five ways that a juvenile offender charged with a criminal offense can have his or her case transferred to adult court. Once a juvenile offender is transferred to adult court and found guilty for the offense or lesser included offenses, the juvenile offender must be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the adult court judge imposes juvenile sanctions pursuant to s. 985.233(4)(b). Transfer mechanisms include the following:

(1) A juvenile offender may demand to be tried as an adult. The juvenile court judge must transfer the case to adult court if prior to the start of an adjudicatory hearing, the juvenile offender, joined by a parent or legal guardian, demands in writing to be tried as an adult. This transfer mechanism is referred to as a voluntary waiver [s. 985.226(1)].

(2) The state attorney has the discretion and may request the court to transfer a juvenile offender, 14 years-of-age or older, to adult court for criminal prosecution for any violation of law. If the juvenile offender has previously been adjudicated delinquent for murder, sexual battery, armed or strong armed robbery, car jacking, home invasion robbery, aggravated battery, or aggravated assault, and is charged with a second or subsequent violent crime against a person, the state attorney must file a motion with the juvenile court requesting the court to transfer the juvenile offender to adult court or proceed pursuant to s. 985.227(1) which gives the state attorney the discretion to file an information on the juvenile offender which directly transfers the case to adult court [s. 985.226(2)(a)].

(3) If a juvenile offender is 14 years-of-age or older at the time of committing a fourth or subsequent felony offense and the juvenile offender was adjudicated for three previous felony offenses of which one or more offenses involved the use or possession of a firearm or violence against a person, the state attorney must request the juvenile court to transfer the juvenile offender to adult court or provide reasons to the court for not making the request. Upon the state attorney's request to the juvenile court, the judge shall either order the juvenile offender to be transferred to adult court or provide written reasons for not issuing such an order. The state attorney may also proceed pursuant to s. 985.227(1) [s. 985.226(b)]. Judicial waiver is the least used method to transfer juvenile offenders to adult court. According to

data from the State Courts Administrator, in 1979, over 50% of transfers were waived judicially. By 1994, only seven percent of the cases transferred were waived judicially. In 1997, less than three percent of the transfers were judicially waived.

(4) If a juvenile offender of any age is charged with a violation of law punishable by death or life imprisonment and a grand jury issues an indictment, the case must be tried as an adult [s. 985.225(1)].

(5) A. The state attorney may file an information on any juvenile offender age 14 or 15 at the time of the offense when in the state attorney's judgement the public interest requires that adult sanctions be considered or imposed and the juvenile offender is charged with one of the following offenses:

- arson
- sexual battery
- robbery
- kidnaping
- aggravated child abuse
- aggravated assault
- aggravated stalking
- murder
- manslaughter
- throwing, placing or discharging a destructive device or bomb
- armed burglary in violation of s. 810.02(2)(b)
- burglary of a dwelling in violation of s. 810.01(2)(c)
- aggravated battery
- lewd or lascivious assault or act in the presence of a child
- carrying, displaying, using, threatening or attempting to use a weapon or firearm during the commission of a felony
- grand theft in violation of s. 812.014(2)(a) [s. 985.227(1)(a)].

B. The state attorney has the discretion to direct file a juvenile offender who is 16 or 17 at the time of the offense for any felony offense. If the juvenile offender has two previous adjudications or adjudications withheld for delinquency acts, of which one was a felony, the state attorney may direct file the juvenile offender to adult court for a misdemeanor offense [s. 985.227(1)(b)].

C. If a juvenile offender is 16 or 17 years-of-age and is currently charged with a second or subsequent violent crime against a person and the juvenile offender has a previous adjudication for murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery, or aggravated assault, the state attorney must file an information that directly transfers the case to adult court [s. 985.227(2)(a)].

D. Regardless of the juvenile offender's age at the time of offense, the state attorney is required to direct file the juvenile offender to adult court if the juvenile offender has previously been adjudicated three or more times for felony offenses and three of the adjudications resulted in placement in a residential commitment facility [s. 985.227(2)(b)].

E. The state attorney is also required to direct file a juvenile offender to adult court, regardless of the juvenile offender's age at the time of the offense, if the juvenile offender is charged with an offense involving stealing a motor vehicle and while driving the motor vehicle caused the death or serious bodily injury to a person [s. 985.227(2)(c)]. This is the only direct file mandate which is triggered by the presenting offense alone and does not take into account the age of the offender or prior offenses history.

Section 985.227(4), F.S., requires state attorneys to develop and annually update written policies and guidelines to govern determinations for filing an information on a juvenile. These policies and guidelines are submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Juvenile Justice Advisory Board by January 1 of each year. Generally, state attorneys restate sections of the statute related to transferring juvenile offenders to adult court. Several state attorneys provide in their reports additional information on what factors are used in determining when to transfer a juvenile offender to adult court under the discretionary provisions of the statutes. For example, the report for the state attorney from the Ninth Judicial Circuit states the following:

"The primary duty of a prosecutor is to seek justice while fully and faithfully representing the interests of the state. In juvenile cases, the prosecutor should consider the special interests and needs of the juvenile to the extent that the prosecutor can do so without compromising his or her primary concern: the safety and welfare of the community, including the victim. In certain juvenile cases, the prosecutor's duty can best be fulfilled by filing an information against the accused juvenile, in order that sentencing options not available to the court under Chapter 985, Florida Statutes may be used by the court is necessary to protect the community."

The state attorney from the Ninth Judicial Circuit ends his report with the following:

"In those cases where the statutes mandate the filing of an information against a juvenile, the prosecutor should again give careful consideration to the prosecutive merit of the complaint. It should be remembered that guidelines are just that, guidelines. The prosecutor's knowledge and assessment of adequate protection of the interests to the community through juvenile proceedings, should enter into the decision to initiate criminal prosecution of a juvenile regardless of the offense charged."

Number of Juvenile Offenders Transferred to Adult Court -- According to data from the Department of Juvenile Justice, the number of cases transferred from juvenile court to adult court has fluctuated over the past five years from a high of 7,315 cases in FY 1995-96 to a low of 5,357 cases in FY 1996-97. The number of youth transferred to adult court has also followed the same pattern over the past five years. In FY 1995-96, the number of youth transferred to adult court was a high of 5,357 while the number of youth transferred in FY 1993-94 was a low of 4,636.

Based on DJJ data, the following chart compares the total number of delinquency felony cases, misdemeanor cases, and other cases referred statewide to DJJ from FY 1992-93 to FY 1996-97 and the number of cases transferred to adult court for those same fiscal years.

**A COMPARISON OF DELINQUENCY CASES RECEIVED
AND CASES TRANSFERRED TO ADULT COURT
STATEWIDE (FY 1992-93 to FY 1996-97)**

OFFENSE CATEGORY TOTALS (WITH PERCENTAGE)

	Refer.	Transf.	Refer.	Transf.	Refer.	Transf.	Refer.	Transf.	Refer.	Transf.
	1992-93		1993-94		1994-95		1995-96		1996-97	
Felonies	58,814	5,979 (10.2%)	62,819	5,624 (0.9%)	63,225	5,931 (9.4%)	60,043	6,184 (10.3%)	59,125	5,605 (9.5%)
Misdemeanors	67,343	1,066 (1.6%)	76,780	932 (1.2%)	86,115	901 (1%)	89,223	936 (1%)	91,651	809 (0.9%)
Other Offenses	14,927	184 (1.2%)	17,181	173 (1%)	20,160	187 (0.9%)	23,010	195 (0.8%)	22,977	156 (0.7%)
TOTAL	141,084	7,229 (5.1%)	156,780	6,729 (4.3%)	169,500	7,019 (4.1%)	172,276	7,315 (4.2%)	173,753	6,570 (3.8%)

****Source: Department of Juvenile Justice, Profile of Delinquency Cases and Youths Referred, November 1997.**

Based on data from the Department of Juvenile Justice, the following chart compares the total number of youth referred statewide to the department for felony, misdemeanor, and other offenses from FY 1992-93 to FY 1996-97 and the number of youth transferred to adult court for the same fiscal years. The number of youth referred to DJJ and the number of youth transferred to adult court will differ from the number of cases referred to DJJ and transferred to adult court because a youth may have more than one case referred and transferred.

**A COMPARISON OF YOUTH REFERRED FOR DELINQUENCY
AND YOUTH TRANSFERRED TO ADULT COURT
STATEWIDE (FY 1992-93 to FY 1996-97)**

OFFENSE CATEGORY TOTALS (WITH PERCENTAGE)

	Refer.	Transf.	Refer.	Transf.	Refer.	Transf.	Refer.	Transf.	Refer.	Transf.
	1992-93		1993-94		1994-95		1995-96		1996-97	
Felonies	38,883	4,252 (10.9%)	42,223	4,134 (9.8%)	44,037	4,486 (10.2%)	43,484	4,819 (11.8%)	43,872	4,481 (10.2%)
Misdemeanors	41,268	465 (1.12%)	47,614	426 (0.9%)	53,958	409 (0.8%)	56,989	435 (0.8%)	59,113	387 (0.7%)
Other Offenses	3,107	84 (2.7%)	3,199	76 (2.4%)	4,176	97 (2.3%)	4,872	103 (2.1%)	5,339	84 (1.6%)
TOTAL	83,258	4,801 (5.8%)	93,036	4,636 (5%)	102,171	4,992 (4.9%)	105,345	5,357 (5.1%)	108,324	4,952 (4.6%)

****Source: Department of Juvenile Justice, Profile of Delinquency Cases and Youths Referred, November 1997.**

According to DJJ data, burglary is the most common charge for which a youth is transferred to adult court. Over the past five years, this offense accounted for between 21% and 23% of all cases transferred to adult court. The number of cases transferred for burglary has declined 15% over the past five years.

About 30% of the offenses for which youth are transferred consist of three offenses. Robbery accounted for 15% of the cases transferred, auto theft 6%, and aggravated assault 9%. The number of aggravated assault cases transferred to adult court declined 12% from FY 1995-96 to FY 1996-97. Auto theft cases transferred to adult court declined about 29% from FY 1995-96 to FY 1996-97. Over the past five years, auto theft cases transferred to adult court has declined 48%.

The number of felony drug offenses transferred to adult court has increased 23% over the past five years accounting for about 13% of the total number of cases transferred to adult court in FY 1996-97. The number of felony marijuana cases has increased from 56 cases in FY 1992-93 to 105 cases in FY 1996-97 or an increase of 88%.

Sentencing Options for Juvenile Offenders Transferred to Adult Court -- According to an August 1997 OJJDP report entitled Juvenile Offenders and Victims: 1997 Update on Violence, juvenile court dispositions were traditionally based on the offender's individual characteristics and situation and tended to have rehabilitation as the primary goal. As states have shifted the purpose of juvenile court away from rehabilitation and toward punishment, accountability, and public safety, dispositions are more offense-based. In addition to increasing the options for transferring juvenile offenders to adult court, states have also changed the sentencing structure for those juvenile offenders transferred to adult court and those serious juvenile offenders not transferred to adult court.

There are five blended sentencing options which create a "middle ground" between traditional juvenile and adult sanctions. These five blended sentencing options are the following:

1. Juvenile-exclusive blend: The juvenile court may impose a sanction involving either the juvenile or adult correctional systems. (New Mexico)
2. Juvenile-inclusive blend: The juvenile court may impose both juvenile and adult correctional sanctions. The adult sanction is suspended pending a violation or revocation of the juvenile sanction. (Connecticut, Minnesota, and Montana)
3. Juvenile-contiguous blend: The juvenile court may impose a juvenile correctional sanction that may remain in force beyond the age of its extended jurisdiction, at which point the offender may be transferred to the adult correctional system. (Colorado for "aggravated juvenile offenders", Massachusetts, Rhode Island, South Carolina, and Texas)
4. Criminal-exclusive blend: The criminal court may impose either an adult sanction or a juvenile sanction. (California, Florida, Colorado for "youthful offenders", Idaho, Michigan, and Virginia)

5. Criminal-inclusive blend: The criminal court may impose both juvenile and adult correctional sanctions. The adult sanction is suspended pending a violation and revocation of the juvenile sanction. (Arkansas and Missouri)

Section 985.233, F.S., defines sentencing options for juvenile offenders transferred to adult court. An offender found to have committed a violation of law may, as an alternative to adult dispositions, be committed to DJJ for placement in a residential commitment program or be placed on DJJ community control. In determining whether to impose juvenile sanctions on a juvenile offender transferred to adult court, the court must consider the following factors.

- The seriousness of the offense and whether the community would best be protected by juvenile or adult sanctions.
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.
- Whether the offense was against persons or against property, with greater weight being given to offenses against persons, specifically if personal injury resulted.
- The sophistication and maturity of the offender.
- The record and previous history of the offender (prior arrests, referrals, placements on community control or prior commitments to DJJ).
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to services immediately available.
- Whether DJJ has appropriate programs, facilities, and services immediately available.
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

Section 985.233(2) and (3), F.S., require a presentence investigation report prepared by DOC with a recommendation by DJJ on what sanctions would be appropriate following a finding of guilt. At the sentencing hearing, all parties are heard and the court may receive all relevant material related to sentencing the offender. Under current law, adopted in the 1997 Legislative session, the trial court can impose an adult sanction or a juvenile sanction and may not sentence the offender to a combination of adult and juvenile punishments. If the juvenile offender is given juvenile sanctions and DJJ determines that the juvenile offender is not suitable to a community control programs or placement in a residential commitment program, the court may revoke the previous adjudication, impose an adjudication of guilt, classify the offender as a youthful offender when appropriate and impose an adult sentence.

What Happens to Juvenile Offenders Transferred to Adult Court -- The Department of Juvenile Justice does not maintain data on what happens to those youth who are transferred to adult court. However, based on data from the Department of Corrections

(DOC), for FY 1996-97, there were 782 offenders under the age of 18 admitted to a state prison. Offenders this age are placed in one of thirteen DOC youthful offender facilities. Inmates under the age of 24 are either sentenced or classified by DOC as youthful offenders.

The court may sentence a person as a youthful offender if the offense was committed prior to the person's 21st birthday [s. 958.04, F.S.]. DOC may classify an inmate as a youthful offender if the inmate is 21 years old or less with a sentence of less than 10 years. Inmates who are 19 years old and under with a sentence of less than 10 years may also be classified as a youthful offender if the inmate's safety would be jeopardized in an adult institution.

According to an October 1997 OJJDP report, youth incarcerated in adult institutions are five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent more likely to be attacked with a weapon than their counterparts in a juvenile correctional facility.

Youthful offenders who are between the ages 14 and 18 years old are separated from youthful offenders ages 19 to 24. There are currently two DOC correctional facilities for youthful offenders age 18 and below. They are the Indian River Correctional Institution (population 351 on 6/30/97) and the Hillsborough Correctional Institution (population 329 on 6/30/97).

In FY 1996-97, there were 1,664 offenders under the age of 18 placed on adult community supervision and on June 30, 1997, there were 1,039 offenders under the age of 18 on adult community supervision caseloads.

A 1996 study entitled The Transfer of Juveniles to Criminal Court: Does It Make a Difference? by Donna Bishop, et. al., compared the recidivism of juveniles who were transferred to criminal court in 1987 with the recidivism of a matched sample of juveniles who were retained in the juvenile system. In a review of the research literature on whether or not transfer practices are targeting the most appropriate juvenile offender population (serious and chronic offenders), Bishop, et. al conclude that the studies suggest that many youth selected for transfer do not match targeted juvenile offender populations. A second issue addressed by researchers is whether or not punishment received by juvenile offenders in adult court is more severe than the punishment they would have received had they been retained in the juvenile justice system. Studies have produced mixed results with some showing that juvenile offenders transferred to adult court tend to receive more lenient sentences. Other studies found that violent juvenile offenders transferred to adult court receive sentences considerably longer than sentences likely or even possible in the juvenile justice system. Juvenile offenders transferred for property offenses tend to receive less harsh sentences in adult court than they would likely receive in juvenile court. There has been little research on the impact of transfer on recidivism.

By every measure of recidivism used in the Bishop, et. al. study (individual rearrests and group rates of arrest, severity of charges at rearrest, and time to failure among those rearrested over a one-year follow-up period), reoffending was greater among the juvenile offenders transferred to adult court than among the matched offenders who remained in the juvenile system. The authors found that despite being incarcerated for longer periods of time, juvenile offenders transferred to adult court committed more

offenses upon their release than nontransferred juvenile offenders. Transferred offenders were more likely than nontransferred offenders to commit a subsequent felony offense.

In a subsequent 1997 study, the same researchers followed the same two matched groups (transferred and nontransferred) through November 1994 to examine whether the short-term recidivism results found in the earlier study differed in the long term. Consistent with results found in the earlier study for a one-year follow-up period, transferred juvenile offenders reoffended more quickly than did their nontransferred counterparts.

However, when examining rearrest data through November 1994, the study showed that the nontransfers eventually caught up with those juvenile offenders transferred to adult court in terms of prevalence of rearrests. This recidivism catchup was due to the impact of transfer for property felonies. More transferred property felons avoided rearrest upon their release than was true for their nontransferred counterparts. When offense type was controlled, transfer was more likely to increase recidivism both in the short term and in the long term.

Speedy Trial Provision in Juvenile Court -- Section 16, Article 1 of the Constitution of the Florida provides that in all criminal prosecutions, the accused has a right to a speedy and public trial. Section 918.0155, F.S., provides that in all criminal prosecutions, the state and the defendant shall each have the right to a speedy trial. Subsection (2) of this section requires the Supreme Court to promulgate by rule, procedures through which the right to a speedy trial, as guaranteed by subsection (1) of s. 918.0155 and s. 16, Article 1 of the State Constitution, shall be realized.

Section 985.218(6), F.S., requires that if a petition has been filed alleging that a child has committed a delinquent act, the adjudicatory hearing on the petition must begin within 90 days after the earlier of the date the child is taken into custody or the date the petition is filed. A child shall be deemed to have been brought to trial if an adjudicatory hearing begins within the 90 days. If an adjudication does not begin within the 90 day period or the court does not grant an extension, the petition is dismissed with prejudice. A judge may extend the 90 day period upon a motion by any party and, following a hearing, the judge finds that the interest of the child may best be served by extending the 90 day period. Heavy workload before the court, lack of diligent preparation for the case, failure to obtain witnesses, or other avoidable or foreseeable delays are not sufficient causes for such an extension.

Rule 8.090 of the Florida Rules of Juvenile Procedure (1998) provides for a number of reasons for a court to extend the 90 day period. These reasons include the following:

- An extension stipulated by the child's counsel.
- An extension by a written or recorded order of the court on the court's own motion or by motion by either party in exceptional circumstances which may include:
 - illness or unexpected incapacity or unavoidable absence of a person whose presence or testimony is uniquely necessary;

- the state showing that the case is so unusual or complex that it is unreasonable to expect adequate preparation within the 90 day period;
- the state demonstrating that specific evidence or testimony is not available, despite diligent efforts to secure it, but will be available at a later date;
- the state or the child citing developments which could not have been anticipated and will be material at trial;
- a showing by either party that a delay is necessary to accommodate a co-respondent; or
- the state show that the child has caused a major delay or disruption of preparation or proceedings or has prevented the attendance of witnesses.

Boot Camps -- Boot camps were created to provide intensive educational and physical training and rehabilitation for appropriate youth. Section 985.309, Florida Statutes, reserves boot camp programs for youth 14-18 years of age at the time of adjudication. In addition, these youth must have committed an offense that would be a felony if committed by an adult. Life, capital or first degree violent felony offenses are excluded from eligibility in boot camps.

The first boot camp was started in 1993 in Manatee County. Currently there are eight boot camps operating in Florida. They are located in Bay, Collier, Leon, Manatee, Martin, Pinellas, Polk and Orange counties. There are two other boot camp style programs in operation, the Youth Development Academy in Hendry County and the Forestry Youth Academy in Levy County. (Juvenile Justice Advisory Board 1998 Annual Report and Juvenile Justice Fact Book).

The Department of Juvenile Justice (DJJ), counties or municipalities operating boot camps screen each child to determine eligibility for admission. Only those youth whose medical and psychological profiles are conducive to successfully completing the program are accepted into the boot camp. Extensive screening for youth is necessary due to the intensity of boot camps. Youth in any boot camp becoming unmanageable, or medically or psychologically ineligible must be removed from the program. Section 985.309 (10), Florida Statutes.

Youth committed to low-risk residential programs spend at least two months in a boot camp component and two months in aftercare. Youth committed to moderate-risk residential programs spend at least four months in a boot camp component and four months in aftercare. (Section 985.309, Florida Statutes). The average length of stay is six to eight months in the residential component. Approximately 30 youth are committed to each boot camp program.

Program designs are typically a military style with several basic components³:

- marching drills
- calisthenics
- rigid dress code
- physical training

³Status Report on Boot Camps in Florida Administered by the Department of Corrections and Department of Juvenile Justice, 1995. The Office of Program Policy Analysis and Government Accountability.

- manual labor
- general education
- vocational training
- substance abuse program
- rehabilitation training
- decision making and personal development
- values counseling

Several boot camps use a transitional component (transition phase) for intensive pre-release planning and preparation. Boot camps also use an aftercare component.

Subsections (7) through (9) of s. 985.309, Florida Statutes, directs the DJJ to adopt rules for county, municipal or state operated boot camp programs. The rules provide disciplinary sanctions and restrictions for youth in the program. The DJJ is also authorized to conduct quarterly inspections of each boot camp program. County or municipal boot camps failing to pass quarterly inspections could have their boot camp closed if the deficiency causing the failure is material and the program does not correct the deficiency by the next scheduled inspection.

The DJJ records and monitors the criminal activity, educational progress and employment placement of all youth committed to a boot camp program. The DJJ must publish an outcome evaluation study of each boot camp program within 18 months after the fourth platoon is graduated. Section 985.309, Florida Statutes.

Juvenile Justice Cost-Benefit Analysis -- Presently, the DJJ consults with the Juvenile Justice Advisory Board (JJAB) and providers to develop a cost-benefit model and apply the model to each commitment program. A report ranking commitment programs based on cost-benefit is submitted to the appropriate substantive and appropriations committees of each house of the Legislature by December 31 of each year.

B. EFFECT OF PROPOSED CHANGES:

The provisions of HB 4193 are numerous; therefore, this section is organized by the section numbers of the bill. This presentation will allow a more thorough coverage of the proposed changes and it will allow for a more concise explanation and tracking of each change.

Section 1. The bill amends existing language in the Florida Evidence Code permitting adjudications of delinquency for felony offenses as evidence when attacking the credibility of witnesses. Current law states that the credibility of a witness may be attacked if evidence is shown that the witness was convicted of a crime punishable by death or imprisonment exceeding one year under the law under which the witness was convicted. The credibility of witnesses may also be attacked for if evidence is shown that a witnesses was convicted of crimes of dishonesty or false statements. Juvenile records are exempt from this provision.

The bill expands the current language to allow the credibility of any witness to be attacked if evidence is shown that the witness was adjudicated delinquent for an act that would be punishable by death or imprisonment exceeding one year if committed by an

adult under the law under which the witness was delinquent or if the delinquent act involved dishonesty or a false statement.

Section 2. The bill amends the definition of prior record to include all of an offender's prior juvenile history of acts that would be crimes if committed by an adult. The crimes would be scored and considered as offenses committed by an adult. An adjudication withheld or an adjudication of delinquency would be considered a conviction.

Presently, juvenile dispositions of offenses committed by the offender within three years before the primary offense are included in the offender's prior record when the offense would have been a crime had the offender been an adult. Juvenile dispositions of sexual offenses committed by the offender which were committed three years or more before the primary offense are included in the offender's prior record if the offender has not maintained a conviction-free record, either as an adult or a juvenile, for three consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense. Section 921.0011, Florida Statutes, relating to sentencing guidelines.

The Department of Corrections (DOC) anticipates an increase in their investigative workload. DOC staff estimates researching 24,952 score sheets for youth meeting the proposed changes. Although, according to DOC, the majority of the score sheets would not have a juvenile record, the juvenile data would still need to be researched to rule out the possibility of prior history. This workload would be in addition to DOC's workload for the approximately 16.5 percent of offenders meeting the current age requirement.

Section 3. The amended definition of prior acts would expire October 1, 1998. That would give three months life span to prior records under the sentencing guidelines at which time they will expire and be replaced by the criminal punishment code established in the 1997 legislative session.

Section 4. The definition of prior records is amended under s. 985.0021, F. S., relating to the criminal punishment code. This language is identical to the language in section 2. The criminal punishment code replaces the sentencing guidelines which were abolished the 1997 Legislative session.

Section 5. Criminal history retention of juvenile records is amended under the bill. This change would make all felony offenses committed by an adult, including forcible felony offenses, grounds for merging adult and juvenile records when statutory language dictates. Also, the degree to which juvenile records could be made public records is expanded.

For example, Juvenile records retained by the DLE would be merged with adult records under the provisions of HB 4193. Presently, DLE retains the criminal history of a minor classified as a serious or habitual juvenile offender for five year after the date the offender reaches age 21. Records of minors not classified a serious or habitual offenders are retained for five years after a minor reaches age 19. The records are expunged unless a person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not been destroyed. The person's adult criminal history record must be merged with the person's minor record and be retained as the person's adult record. A person's juvenile record is not expunged if a minor is adjudicated as an adult for a forcible felony. The minor's

criminal history record prior to the time of the minor's adjudication as an adult must be merged with his adult record. Section 943.0515, Florida Statutes.

Under the bill, if any person charged as an adult for committing a felony and the person's criminal history record as a minor has not been destroyed, the person's record as a minor would be merged with the person's adult criminal history record and would be retained as part of the person's adult record. If at any time a minor is adjudicated as an adult for a felony, the minor's criminal history record prior to the time of the minor's adjudication as an adult must be merged with his record as an adjudicated adult.

Section 6. The bill creates a definition "violation of supervision" to mean a violation of community control or a violation of any other sanction imposed as a result of a disposition for a delinquent act, including furlough and aftercare.

Section 7. Juvenile records would no longer be considered confidential. Amending s. 985.04, Florida Statutes would more closely blend the adult and juvenile justice systems in terms of juvenile and criminal records. The proposed language would make public records all of a juvenile's prior history of acts that would be crimes if committed by an adult, and orders of disposition for such acts.

Section 8. Subsection (k) of section 985.31, Florida Statutes is reenacted for the purpose of incorporating the amendment to section 985.04, Florida Statutes.

Section 9. The DJJ and the clerk of the court maintain juvenile records until a youth reaches age 24 or age 26 for serious or habitual delinquent offenders. Records are not destroyed until five years after the last entry or until three years after the death of a youth.

The proposed changes would delete the requirement to destroy records five years after the last entry for persons reaching age 24 or age 26 for serious or habitual delinquent offenders. The new language would state that if a defendant is sentenced for a felony committed before reaching age 24, the clerk would be required to merge the defendant's record of prior delinquent acts with his adult record. Those merged record would not be confidential.

Section 10. The bill provides that, except as otherwise provided in law, an adjudication of delinquency shall not be equivalent to a conviction nor a finding of guilty or that a child will be labeled a criminal as a result of the adjudication of delinquency.

Section 11. The bill provides that unless otherwise required by law, a state attorney has several options for handling a delinquency referral.

Section 12. The bill provides that a written report of probable cause affidavit be given to DJJ for a youth taken into custody for a violation of supervision.

Section 13. The bill references the newly created s. 985.2155 related to detention for a youth failing to appear for an arraignment for a violation of supervision (see section 17) in a detention related statute.

Section 14. Reenacts ss. 985.208 and 985.219 for the purpose of amending s. 985.215 related to detention.

Section 15. The bill cross references a newly created section (s. 985.2155) to a section relating to detention.

Section 16. The bill makes technical corrections to a statute related to powers of disposition and provides that unless otherwise provided by law, a court may not commit a child to a jail or to a facility used primarily as a detention center or facility or shelter.

Section 17. The courts would have the discretion to place youth in secure detention for technical violations of supervision. If the youth failed to appear for an arraignment for a violation of supervision, or for a hearing on the violation of supervision and if the hearing on the violation is set within 14 days at the detention hearing for failure to appear, the juvenile may be detained for a maximum of 14 days while awaiting a hearing unless the juvenile otherwise qualifies for a longer period of detention.

Section 18. Repeals subsection (6) of section 985.218, F.S., related to speedy trial requirements for cases filed in juvenile court. This provision removes the requirement that an adjudicatory hearing must begin within 90 days following the filing of a petition or when the juvenile offender is detained which ever is earlier.

Section 19. Adds to the statutes, attempts to commit the enumerated offenses for which a juvenile offender must be transferred to adult court through a motion to the juvenile court to waive jurisdiction to adult court.

Section 20. Adds to the statutes, attempts to commit the enumerated offenses for which a juvenile offender is mandatorily direct filed or direct filed at the discretion of the state attorney. The bill requires that a juvenile offender be mandatorily direct filed by a state attorney if the juvenile offender has three prior felonies or six prior misdemeanors or any combination of six offenses or technical or law violations of community supervision. Each of these offenses must be separated in time by 45 days or more from each other.

Section 21. The bill requires that for juvenile offenders age 16 or 17 mandatorily transferred to adult court pursuant to section 20 above, the court may only sentence the offender to adult sanctions. For juvenile offenders age 14 and older who are mandatorily transferred to adult court for a felony or a misdemeanor offenses are the offender has a prior adjudication for the commission or attempt to commit murder, sexual battery, robbery, car jacking, home invasion, aggravated battery, or aggravated assault, and has been charged with a second violent crime, adult sanctions are mandated.

For juvenile offenders transferred to adult court at the discretion of the state attorney, the court may withhold an adjudication of guilt, place the juvenile offender on probation or community control under the supervision of the Department of Corrections and as a condition of supervision, require the juvenile offender to be placed in residential commitment program as recommended by the Department of Juvenile Justice.

The bill authorizes a judge in adult court to access DJJ commitment programs for the purpose of requiring placement in such programs as a condition of DOC community supervision.

Section 22. Sections 985.225 related to indictment of a juvenile and 985.31 related to serious and habitual offenders are reenacted for the purpose of incorporating amendments to s. 985.233.

Section 23. The eligibility requirements for boot camps would be expanded to include youth 14 and older who have not entered a plea of guilty or nolo contendere to or been adjudicated for any capital, life, or violent first degree felony. A youth would not have to be adjudicated and committed to the DJJ for a felony offense, excluding capital, life or violent first degree felonies to be placed in a boot camp. The courts would have the discretion to use boot camps more frequently when disposing of juvenile cases.

Early intervention boot camps would also be created for offenders at least 12 years of age. Offenders could not have entered a plea of guilty or nolo contendere to or been adjudicated of capital, life or violent first degree felonies. In addition, a youth could not have more than two prior cases involving acts that would be felonies if committed by an adult or more than four prior cases involving any combination of acts that would be either misdemeanors or felonies if committed by an adult.

The DJJ and county or municipal governments could operate an early intervention boot camp. The program would have a minimum 10-day residential component followed by at least two months of aftercare. Early intervention boot camps would be classified as low-risk residential programs. Young offenders would be discouraged from committing further offenses through intensive educational and physical training, discipline and personal responsibility.

Section 24. Sections 985.231, 985.31, 985.311 and 985.314, Florida Statutes, would be reenacted to incorporate the amendment to Section 985.309, Florida Statutes.

Section 25. Presently, the DJJ consults with the JJAB and providers to develop a cost-benefit model and apply the model to each commitment program. A report ranking commitment programs based on cost-benefit is submitted to the appropriate substantive and appropriations committees of each house of the Legislature by December 31 of each year. HB 4193 would require DJJ and the JJAB to consider the following factors in the annual report:

- the recidivism rate measured by whether a juvenile has been arrested within one year of leaving a commitment program, regardless of whether the commitment program was successfully completed;
- the seriousness of the criminal history of the juveniles in the program;
- the program's cost per client; and
- the average age of the juveniles in the program.

Section 26. The bill shall take effect July 1 of the year in which the bill is enacted.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

No.

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

Yes. The DJJ and the DOC anticipate an increase in workload as a result of the provisions of the bill.

(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?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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

Juvenile offenders on adult community supervision and as a condition are placed in a DJJ commitment facility will pay supervision costs to DOC upon their release from the DJJ program. While in a DJJ facility, the offender will not be required to pay supervision costs to DOC.

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?

The state attorney and the courts along with DJJ.

- (2) Who makes the decisions?

See (1).

- (3) Are private alternatives permitted?

No.

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

Yes, if ordered to do so by the court.

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

Possibly.

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

No.

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

- (1) parents and guardians?

No.

- (2) service providers?

Yes, since the vast number of DJJ commitment programs are under contract to private providers.

- (3) government employees/agencies?

Yes.

D. STATUTE(S) AFFECTED:

See the Section-by-Section Research (Section E).

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amending s. 90.610, F. S., related to conviction of certain crimes as impeachment.

Section 2. Amending s. 921.0011, F. S., related to sentencing definitions.

Section 3. Providing an expiration date of October 1, 1998 for definition changes to s. 921.0011, F. S., relating to sentencing definitions.

Section 4. Amending s. 921.0021, F. S., relating to the criminal punishment code.

Section 5. Amending s. 943.0515, F. S., related to the retention of criminal history records of minors.

Section 6. Amending s. 985.03, F. S., related to a creating a definition of violations of supervision

Section 7. Amending s. 985.04, F. S., related to oaths, records, and confidential information.

Section 8. Reenacting subsection (k) of s. 985.31, F. S., for the purpose of incorporating the amendment to s. 985.04, F. S.

Section 9. Amending s. 985.05, F. S., related to court records.

Section 10. Amending s. 985.228, F. S., related to adjudicatory hearings, withheld adjudications, and orders of adjudication.

Section 11. Amending s. 985.21, F. S., related to intake and case management.

Section 12. Amending s. 985.211, F. S., related to release or delivery from custody.

Section 13. Amending s. 985.215, F. S., related to detention.

Section 14. Reenacting ss. 985.208 and 985.219, F. S., for the purpose of incorporating the amendment to s. 985.215, F. S., related to detention.

Section 15. Amending s. 985.213, F. S., related to the use of detention.

Section 16. Amending s. 985.231, F. S., related to powers of disposition in delinquency cases.

Section 17. Creating s. 985.2155, F. S., related to violations of supervision and failure to appear.

Section 18. Repealing s. 985.218, F. S., related to petition and speedy trial requirements.

Section 19. Amending s. 985.226, F. S., related to criteria for waiver of juvenile court jurisdiction.

Section 20. Amending s. 985.227, F. S., related to prosecution of juveniles as adults by the direct filing of an information in the criminal division of the circuit court; discretionary criteria and mandatory criteria.

Section 21. Amending s. 985.233, F. S., related to sentencing powers.

Section 22. Reenacting ss. 985.225 and 985.31, F. S., for the purpose of incorporating the amendment to s. 985.233, F. S., related to sentencing powers.

Section 23. Amending s. 985.309, F. S., related to boot camps for children.

Section 24. Reenacting ss. 985.231, 985.31, and 985.311, F. S., for the purpose of incorporating the amendment to s. 985.309, F. S., related to boot camps for children.

Section 25. Amending s. 985.404, F. S., related to administering the juvenile justice continuum and the development of a cost-benefit model.

Section 26. Providing an effective date of July 1, of the year the bill is enacted.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

The Department of Corrections estimates that the additional workload resulting from the statutory changes proposed in this bill related to researching an offender's prior juvenile record would require an estimated expenditure of funds totaling about \$1 million.

The Department of Corrections, in consultation with the Department of Juvenile Justice, is preparing fiscal, prison bed, and community supervision impacts for a Criminal Justice Impact Conference on the transfer and sentencing provisions of this bill. The Impact Conference is scheduled to review this bill on April 9, 1998.

The Department of Juvenile Justice has prepared initial fiscal impact estimates of the major provisions of this bill. Data limitations related to the number of juvenile offenders transferred to the adult system by mandatory or discretionary direct file methods preclude DJJ from providing a more accurate estimate of the fiscal impact of major provisions of this bill.

DJJ is unable, at the time of this report, to provide data on those juvenile offenders eligible for the blended sentencing provisions of this bill (i.e., adult probation with a condition of placement in a DJJ residential commitment facility) for juvenile offenders transferred to adult court at the discretion of the state attorney or judicially waived at the discretion of the juvenile court judge. Nor can DJJ estimate the number of juvenile offenders transferred to

adult and eligible for a blended sentence who otherwise would be sentenced back to the juvenile justice system under the provisions of current law.

Sentencing juvenile offenders tried as adults to a DJJ residential commitment program as a condition of an adult probation sentence will likely result in additional costs to DJJ. DJJ estimates that if only 25% of the 4,700 juvenile offenders (or 1,200 offenders) transferred to adult court received a blended sentence as provided for in this bill, DJJ estimates the fiscal impact to be about \$123 million (FCO=\$82 million and operating costs=\$42 million).

Assuming that only 600 of the 4,700 juvenile offenders transferred to adult court are placed on adult community supervision with a condition that the offender be placed in a DJJ residential commitment facility will result in an estimated fiscal impact of about \$62 million (FCO=\$41 million and operating costs=\$21 million).

The bill also provides that juvenile offenders on DJJ community supervision who fail to appear for an arraignment for a violation of DJJ community supervision will be placed in secure detention. According to DJJ data, an estimated one-third of the 1,522 cases detained for contempt of court in FY 1996-97 were for failure-to-appear. Factoring in population growth, DJJ estimates that 760 juvenile offenders would be detained for failure-to-appear at an estimated fiscal impact upon secure detention of about \$3 million (FCO=\$2 million and operating costs=\$1 million).

This bill will be heard by the Criminal Justice Impact Conference on April 9, 1998. Fiscal impacts for this bill will be determined at that time. DJJ and DOC will present their estimated fiscal impacts and respective methodologies used and assumptions made in determining each of their estimates.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

VI. COMMENTS:

03/13/98 H Filed

03/17/98 H Introduced -HJ 00232

04/02/98 H Referred to Juvenile Justice (JC); Criminal Justice Appropriation

-HJ 00442; On Committee agenda-- Juvenile Justice (JC), 04/08/98,

2:45 pm, 317C --Meeting cancelled

04/08/98 H On Committee agenda-- Juvenile Justice (JC), 04/14/98, 1:30 pm, 317C
04/14/98 H Comm. Action: Favorable with 8 amendment(s) by Juvenile Justice (JC) -HJ 00690
04/16/98 H Now in Criminal Justice Appropriations -HJ 00690
05/01/98 H Died in Committee on Criminal Justice Appropriations

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 14, 1998, the Committee on Juvenile Justice heard this bill. There were eight amendments heard and passed by the committee. These amendments were as follows:

(1) Adds a new section to the bill amending s. 985.219, F.S.; authorizing the court to assess a civil penalty of up to \$100 upon a parent, legal guardian, or adult relative who receives a notice to appear, accepts custody of a child from a law enforcement officer or an authorized agent of the Department of Juvenile Justice, and who fails to produce the child for any specified court proceeding. A civil penalty of up to \$100 may also be assessed upon any parent or legal guardian who fails to bring a child to a court appearance in response to a summons.

(2) Removes from the bill the phrase "withhold adjudication of guilt" which prohibits the adult court judge from imposing certain sanctions for juvenile offenders mandatorily transferred to adult court. [Section 21 of the bill amending s. 985.233, F.S.]

(3) and (4) Removes from the bill the provision that a juvenile offender transferred to adult court may be sentenced to adult probation or community control with a special condition that the offender be placed in a DJJ residential commitment facility. [Section 21 of the bill amending s. 985.233, F.S.]

(5) Removes from the bill the provision that a juvenile offender may be placed in secure detention for up to 14 days for failing to appear for a hearing on a violation of community supervision if the hearing is set within 14 days at the time of the detention hearing. [Section 17 of the bill]

(6) Removes from the bill the provision that technical (non-law) violations of community supervision be counted as though they were misdemeanors for purposes of determining whether a juvenile offender should be transferred to adult court. [Section 20 of the bill amending s. 985.227, F.S.]

(7) and (8) Conforms the bill to amendment #5 by deleting cross references. [Section 13 and Section 15 of the bill]

These amendments significantly change the estimated fiscal impact of the bill regarding the Department of Juvenile Justice. Provisions of the bill removed through the amendatory process make the fiscal impact of this bill upon DJJ indeterminate and insignificant.

The fiscal impact of the bill upon the Department of Corrections remains as determined by the Criminal Justice Impact Conference at its April 8, 1998 meeting to be the following:

(A) Requiring a person's juvenile record to be scored for purposes of the adult criminal punishment code will have two impacts upon DOC. First, additional correctional probation officers will be required to research more criminal histories. This impact upon DOC correctional probation officer workload will require 21 additional FTEs for a first year cost of \$1,035,386. Second, the estimated fiscal impact from opening up an offender's prior juvenile record to criminal punishment scores is indeterminate but potentially significant. More of an offender's criminal/juvenile offense history will be scored resulting in higher punishment code scores which will result in the need for more prison beds and correctional probation officers.

(B) Requiring the transfer to adult court of juvenile offenders age 16 and above if charged with a felony or misdemeanor and either has three prior felony adjudications or adjudications withheld or six felony or misdemeanor (any combination) adjudications or adjudications withheld with a 45 day gap between each act will have a fiscal impact upon DOC.

The fiscal impact of this provision is indeterminate but potentially significant since the only way that DOC can quantify the impact is to estimate the minimum sentence (adult community supervision) for those juvenile offenders transferred to adult court. In FY 1996-97, there were 1,195 16 and 17 year old offenders meeting the above criteria who were not transferred to adult court. DOC assumes that about 25% of these offenders would not receive a DOC sentence. Should the remaining offenders receive a sentence of DOC community supervision, FY 1998-99 total costs for DOC is estimated to be \$1,271,869 and total costs over the next five fiscal years is estimated to be \$6,198,748. These costs are for 24 additional DOC correctional probation officer staff.

However, DOC believes that a percentage of these offenders would receive a prison sentence. Assuming a prison sentence is given to 17% of this offender population, DOC estimates that it will cost \$4,215,569 in FY 1997-98 to build and operate 137 additional youthful offender prison beds to house those juvenile offenders meeting the above criteria for mandatory transfer to adult court.

VIII. SIGNATURES:

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