

STORAGE NAME: h2081a.jj
DATE: April 16, 1999

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

BILL #: HB 2081
RELATING TO: Juvenile Detention
SPONSOR(S): Representative Farkas
COMPANION BILL(S): S 2164

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

- (1) JUVENILE JUSTICE YEAS 11 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 2081 revises detention criteria provided in s. 985.215, F.S. (Supp. 1998), to allow a judge to continue to detain a youth charged with a second or third degree felony drug offense or a non-violent third degree felony offense if the judge makes written findings of fact that the youth presents a clear and present danger to the community.

The bill would also give the court discretion in the allowable time periods in which to order a delinquent youth to serve in detention or a "child in need of services" (CINS) youth to serve in a staff-secure shelter for committing contempt of court.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 985.213(2)(a), F.S., requires that all determinations and court orders regarding placement of a child into detention care must comply with all statutory requirements and be based on a risk assessment of the child. The only exception to these requirements are cases involving acts of domestic violence which are subject to alternative detention provisions. The mechanism used to gauge the degree of risk a particular juvenile poses to public safety, or to his or her own safety, is called the "risk assessment instrument" (RAI).

Under section 985.215 (2), F.S., a child taken into custody and placed into nonsecure or home detention care, or detained in secure detention care, prior to a detention hearing may continue to be detained by order of the court for a period not to exceed the maximum time limits allowed under s. 985.215, F.S., if any of the following circumstances apply:

(1) The child is alleged to be an escapee or an absconder from a juvenile justice program.

(2) The child is wanted in another jurisdiction for a felony offense.

(3) The child is charged with a violation of law and requests protection from an imminent threat of physical harm.

(4) The child is charged with a domestic violence offense.

(5) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that **does not** involve a drug offense, or a felony of the third degree that is a violent crime, including an offense involving a firearm.

(6) *The child is charged with any second degree or third degree felony that **does** involve a drug offense or any nonviolent third degree felony, **and** the child:*

1. Has a record of failure to appear at court hearings;

2. Has a record of law violations;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Was found in possession of a firearm.

(7) The child is alleged to have violated the conditions of community control or aftercare supervision.

If the court orders a juvenile into a detention placement which is more restrictive than indicated by the RAI, the court is required to provide, in writing, clear and convincing reasons for such placement. [s. 985.215(2)]. However, while the court may detain a child at a placement more restrictive than indicated by the RAI, the court is **not** authorized to order secure detention for those juveniles falling outside the statutory criteria.

If a youth is detained, he or she must be given a detention hearing before the judge within 24 hours. At this time, the judge may order the youth to be held for up to 21 days pending an adjudicatory hearing on the charge. The purpose of the initial detention hearing is to determine the existence of probable cause and the need for continued detention. The adjudicatory hearing (trial) must be commenced within 21 days.

Following an entry of an adjudication order, the youth may remain in detention for up to 15 additional days, unless the court grants a continuance for cause upon motion of the youth or the state attorney.

Under s. 985.216, F.S. (Supp. 1998), a delinquent youth who has been held in direct or indirect contempt of court may be placed in a secure detention facility for 5 days for a first offense or 15 days for a second or subsequent offense, or in a secure residential commitment facility. A child in need of services (CINS) who has been held in direct or indirect contempt of court may also be held for the same time periods (5 and 15 days respectively), but not in a secure detention facility. A CINS youth is required to be placed in a staff-secure shelter or a staff-secure residential facility, or if such placement is unavailable, in a mental health facility or substance abuse facility for assessment.

B. EFFECT OF PROPOSED CHANGES:

House Bill 2081 revises the detention criteria provided in s. 985.215(2), F.S. (Supp. 1998), by adding an additional "qualifier" that a court could use as a basis to continue to detain a youth charged with a second or third degree felony drug offense, or a non-violent third degree felony offense. The additional qualifier would authorize a judge to continue to detain a youth when charged with any of these offenses if the judge makes written findings of fact that the youth presents a clear and present danger to the community. (See Section VI).

The bill would also give the court some discretion in the current allowable time periods in which to order a delinquent youth to serve in detention, or a CINS youth to serve in a staff-secure shelter for committing contempt of court. Instead of being required to order 5 days for a first offense of contempt and 15 days for a subsequent offense, the bill authorizes the judge to order placement "*not to exceed 5 days*" for a first offense and "*not to exceed 15 days*" for a subsequent offense.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

N/A

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

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?
N/A
- b. Does the bill require or authorize an increase in any fees?
N/A
- c. Does the bill reduce total taxes, both rates and revenues?
N/A
- d. Does the bill reduce total fees, both rates and revenues?
N/A
- e. Does the bill authorize any fee or tax increase by any local government?
N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
N/A
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
N/A
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:
 - (1) Who evaluates the family's needs?
N/A
 - (2) Who makes the decisions?
N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

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

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 985.215, and 985.216, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amending s. 985.215, F.S., relating to detention criteria.

Section 2. Amending s. 985.216, F.S., relating to contempt of court.

Section 3. Providing an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Juvenile Justice (DJJ) calculated the non-recurring costs of this bill by determining that the new detention qualifier would generate a need to build 77 detention beds (2,162 x 13 days equals 28,106 resident days divided by 365 days) at a non-recurring cost of \$5,613,300 (77 x \$72,900).

(See Fiscal Comments).

2. Recurring Effects:

The DJJ also calculated the bill's recurring costs by using the cost of detention (\$94 per day) for 13 days (average length of stay per youth in detention) x 2,162 youths for recurring operational costs of \$2,641,964.

(See Fiscal Comments).

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

According to the DJJ, based on data from FY 97/98, potentially 21,616 youths could meet the proposed new qualifier. Assuming 10 percent of these youths met the revised qualifications, this would result in 2,162 additional youths being detained, at an estimated total cost of \$8,255,264. (See Fiscal Comments).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

The amendment adopted by the Juvenile Justice Committee struck the section of the bill pertaining to the additional qualifier to which the DJJ assessed its fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

STORAGE NAME: h2081a.jj

DATE: April 16, 1999

PAGE 7

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Juvenile Justice Committee adopted an amendment to the bill striking the section of bill which provided that a judge could continue to detain a youth charged with a second or third degree felony drug offense or a non-violent third degree felony offense if the judge made written findings of fact that the youth poses a clear and present danger to the community.

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Staff Director:

David De La Paz

David De La Paz