

STORAGE NAME: h0847.cj

DATE: April 14, 1999

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

BILL #: HB 847

RELATING TO: Juvenile Detention

SPONSOR(S): Representative Ryan & Others

COMPANION BILL(S): SB 1724 (S), SB 1594 (C)

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

- (1) JUVENILE JUSTICE YEAS 12 NAYS 0
 - (2) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 8 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

Under HB 847, in those instances where a youth is taken into custody for a violation of law and later released, the person taking the child into custody must make the release report to the juvenile probation officer within 24 hours after the child's release. Current law requires this report to be made with 3 days of the child's release.

Regardless of whether a youth is released from custody or detained, HB 847 would require the person taking the youth into custody to file a copy of the custody report or release report, whichever is appropriate, with the clerk of the circuit court within 24 hours after the report is made.

Under current law, the maximum period of time a juvenile may be held in secure, nonsecure or home detention is 21 days unless an adjudicatory hearing for the youth has been commenced by the court. HB 847 extends the current 21 day detention time limit to 30 days upon a showing of good cause if the offense charged is a capital felony, life felony, first degree felony, or second degree felony involving violence against a person, and the nature of the charge requires additional time.

Currently, there is no specific requirement that a petition for delinquency charging a youth with a delinquent act be filed within a particular time. HB 847 requires that petitions for delinquency be filed within 14 days after the arrest, or for cases where forensic evidence is required, the petition may be filed within 25 days of arrest. Under the bill, the court may extend the 14 day or 25 day time limit in cases where the state attorney seeks to waive the juvenile to adult court or for other good cause. Failure of the State Attorney to comply with the deadlines will result in release of the child from custody.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Types of Detention

Current law identifies three types of detention care. Section 985.03 (18) provides:

(18) "Detention care" means the temporary care of a child in secure, nonsecure, or home detention, pending a court adjudication or disposition or execution of a court order. There are three types of detention care, as follows:

(a) "Secure detention" means temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.

(b) "Nonsecure detention" means temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement.

(c) "Home detention" means temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice staff pending adjudication, disposition, or placement.

Reports and Affidavits

Currently, a child taken into custody for a violation of law must be released as soon as reasonably possible unless there is a need to hold the child, **and** a court issues an order to detain such child pursuant to s. 985.215, F.S. [s. 985.211]. Section 985.211(3), F.S., requires that if a child is released, the person taking the child into custody must make a written report or probable cause affidavit (hereinafter "*release report*") to the juvenile probation officer within 3 days. The report must contain the facts and reasons for taking the child into custody. In addition, the release report must:

- ▶ Identify the child, the parents, guardian, or legal custodian, and the person to whom the child was released, and
- ▶ Contain sufficient information to establish the jurisdiction of the court, and to make a prima facie showing that the child has committed a violation of law or a delinquent act.

Section 985.211(4), F.S., provides that if a person taking a child into custody for a violation of law determines that the child needs to be detained, pursuant to s. 985.215, F.S., the child shall be delivered to the appropriate juvenile probation officer or, if a court has so ordered, to a detention center. Upon delivery of the child, the person taking the child into custody must make a written report or probable cause affidavit (hereinafter "*custody report*") to the juvenile probation officer. The custody report must:

- ▶ Identify the child and, if known, the parents, guardian, or legal custodian.
- ▶ Establish that the child was legally taken into custody, with sufficient information to establish the jurisdiction of the court and to make a prima facie showing that the child has committed a violation of law.

In those instances where a child is taken into custody and detained, a copy of the custody report must be filed with the clerk of the circuit court for the county within which the child was taken into custody within 24 hours. In those instances where the child is taken into custody and released, a copy of the release report must be filed with the clerk of the circuit court, as outlined above, within 1 week after the child has been released from custody, or within 1 week after the release report has been made.

The Initial Stage of Detention

When a law enforcement officer takes a juvenile into custody for a violation of law, the youth is turned over to a juvenile probation officer. The juvenile probation officer makes the initial decision of whether to securely detain a juvenile between the time a juvenile is taken into custody and the time of the juvenile's detention hearing. The decision is made based on a risk assessment instrument developed by the Department of Juvenile Justice as provided in s. 985.213, F.S. If a juvenile probation officer determines a child who is eligible for detention should be released, he or she must contact the state attorney who may authorize release. [s. 985.215(1)].

A juvenile who is taken into custody and detained must be given a detention hearing within 24 hours. The purpose of the hearing is to determine whether there is probable cause to believe the child committed the offense charged, and whether there is a continued need for detention. [s. 985.215 (2)(g)].

Detention Time Limits

Under current law, the maximum period of time a juvenile may be held in secure, nonsecure or home detention is 21 days unless an adjudicatory hearing for the youth has been commenced by the court. Following an order of adjudication, a youth may be detained up to 15 days.

Petition Filings

Currently, there is no specific requirement that a petition for delinquency charging a youth with a delinquent act be filed within a particular time. Florida Rule of Juvenile Procedure 8.090, however, requires a child to be brought to an adjudicatory hearing (trial) within specific time frames to satisfy the requirements of an accused's right to a speedy trial.

B. EFFECT OF PROPOSED CHANGES:

Reports and Affidavits

Under HB 847, in those instances where a youth is taken into custody and released, the person taking the child into custody must make the release report to the juvenile probation officer within 24 hours after the child's release.

Regardless of whether a youth is released from custody or detained, HB 847 would require the person taking the youth into custody to file a copy of the custody report or release report, whichever is applicable, with the clerk of the circuit court within 24 hours after the report is made.

Detention Time Limits

HB 847 extends the current 21 day detention time limit to 30 days upon a showing of good cause if:

- ▶ the offense charged is a capital felony, life felony, first degree felony, or second degree felony involving violence against a person and;
- ▶ the nature of the charge requires additional time.

The Department of Juvenile Justice (DJJ) indicates that the additional 9 days of detention provided for in the bill could increase the current overcrowding in detention centers. The DJJ also notes, however, that currently for most of these youth, the detention stay is continued by the court until the adjudicatory hearing. For the period of time between October 18, 1998 and February 21, 1999, an average of thirteen out of the 21 detention centers have been operating at or over 100% capacity.

Petition Filings

The bill also requires that petitions for delinquency be filed within 14 days after the arrest, or for cases where forensic evidence is required, the petition may be filed within 25 days of arrest. The bill, however, is silent on how the court or the defense would be placed on notice with regard to whether

the 14 day or 25 day time limit applied in a given case. Without clarification, there may be instances where the defense seeks to have a juvenile released from custody based on a failure to comply with the 14 day time limit, when in fact the 25 day time limit applies.

Under the bill, the court may extend the 14 day or 25 day time limit in cases where the state attorney seeks to waive the juvenile to adult court or for other good cause.

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 985.211, 985.215, and 985.218, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. This section amends the time limits for filing release and custody reports.

Section 2. This section provides for extension of the current 21 day time limit for detention.

Section 3. This section imposes filing deadlines for petitions of delinquency.

Section 4. Provides an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects:</u>	FY 99/00	FY 00/01	FY 01/02
DJJ - Fixed Capital Outlay -	\$144,000		
2. <u>Recurring Effects:</u>			
DJJ - Expenditures	\$ 69,350	\$69,350	\$69,350
3. <u>Long Run Effects Other Than Normal Growth:</u>			
N/A			
4. <u>Total Revenues and Expenditures:</u>			
DJJ -	\$ 213,350	\$ 69,350	\$ 69,350

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:**

Funding is provided in the current conference agreement for 100 new detention beds which will be available to offset the impact of this legislation.

In its analysis dated February 22, 1999, the department estimated the total fiscal impact to be in excess of \$7.7 million. A subsequent memo dated April 7, 1999 from George Hinchcliffe with the department explains that "The original analysis ...failed to pick up the offset in non-recurring dollars. Therefore, the fiscal impact is overstated in the amount of 7.7 million dollars non-recurring."

IV. 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

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 30, 1999, the Committee on Law Enforcement and Crime Prevention adopted one amendment to HB 847. The amendment clarified that the court may extend the time periods for filing a petition for delinquency, and if a the petition is not timely filed, the juvenile shall be released from custody, unless the state has filed a notice to direct file, waive or indict the juvenile.

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VII. SIGNATURES:

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