

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Currently, s. 287.042(2)(a), F.S., allows authorized agents to canvass all sources of supply, establish and maintain a vendor list, and contract for the purchase, lease, or acquisition of all commodities and contractual services required by any agency under competitive bidding or by contractual negotiations. The Department of Management Services may restrict purchases from some term contracts to state agencies where the inclusion of other governmental entities will have an adverse effect on competition or to those federal facilities located in this state.

Section 790.22(8), F.S., requires the Department of Juvenile Justice to complete a form for all minors charged with a firearm offense. The form must be forwarded, along with copies of any appropriate court orders, to the Office of Economic and Demographic Research. A paper transfer of information is no longer necessary due to the automation of juvenile records through the Juvenile Justice Information System (JJIS).

Court records for dependent and at-risk youth are currently made available under ss. 39.0132(3) and 984.06(3), F.S. While these subsections appear identical in meaning, minor differences in the language have led to differing interpretations by the courts. This causes confusion for the clerks in providing records to the public.

Sections 985.201 and 985.231, F.S., prescribe the age of jurisdiction for the juvenile courts as age 19, except under certain circumstances. Section 985.231, F.S. permits the Department of Juvenile Justice to retain jurisdiction over all committed youth until the age of 21. However, some courts and department officials have interpreted this provision to only apply to youths committed maximum or high risk.

The juvenile courts are not currently conducting detention hearings by means of telephone or video teleconference. All detention hearings are conducted in person for juvenile justice youth. Under ss. 985.201 and 985.215, F.S. a youth has the right to a hearing with 24 hours of being taken into custody. In at the hearing, the court determines whether to keep the youth in detention care, or release the youth on home detention or electronic monitoring. This decision is made utilizing a risk assessment instrument which incorporates such factors as the seriousness of the current offense, the youth's prior criminal record, and whether the offense involved domestic violence. These factors are given a point value which is totaled by the court and the score revealed by the risk assessment instrument is usually determinative of the youth's subsequent detention status. Youths held in secure detention may not be held for more than 21 days, except in more serious cases in which they can be held up to 30 days. The court also must hold 72 hour detention status reviews in certain cases, such as when a youth is held for an offense of domestic violence or when a youth is held for good cause past the 21 day limit. Another type of hearing is a disposition hearing in which the court may hand down an appropriate sanction following a determination that the youth has committed a delinquent act. In addition, s. 985.404 requires hearings regarding

progress of a youth in a commitment program or when transfer from a program is proposed by the Department of Juvenile Justice.

Section 985.231(1)(a)(1)(c), F.S., authorizes the Department of Juvenile Justice or the state attorney to bring a child before the court on a petition alleging a violation of the program. It is not, however, within the Department's purview to file a petition with the court.

HB 623 w/CS provides that purchases by a contracted provider organizations under the Department of Juvenile Justice would no longer have to submit to competitive bidding requirements. The bill also eliminates a requirement that the Department of Juvenile Justice submit a form with specified information about juvenile to the Office of Economic and Demographic Research. The bill clarifies provisions regarding confidential juvenile information so that staff of the Department of Juvenile Justice and court-appointed guardian ad litem may have better access to juvenile records. The bill also clarifies that Department of Juvenile Justice officials may file affidavits for violation probation instead of petitions, since petitions are typically filed by state attorneys.

HB 623 w/CS also makes changes with regard to court and Department of Juvenile Justice jurisdiction over juveniles. Under the bill, jurisdiction of both the court and the department for all youths will be until the age of 19, with certain exceptions. The exceptions include youths in a maximum or high risk juvenile facility, an intensive residential treatment program for juvenile offenders, a residential sex offender program, or in a program for serious or habitual juvenile offenders. For these committed youths the maximum age for jurisdiction will be 21. (See Comments)

The bill would permit youths to appear by telephone or video teleconference at the following hearings: 48 hour detention reviews for children held secure for domestic violence charges, detention reviews for children in detention care held within 24 hours of arrest, 72 hour reviews of detention status after a child is held beyond a 21 day period because of continuance for cause, and transfer hearings or hearings related to progress by a child in a commitment program. This would eliminate the need for the Department to transport youths physically from detention centers or programs for most court appearances. Adjudicatory hearings (trials) for delinquent acts would continue to occur with the youth physically present under the bill.

C. SECTION DIRECTORY:

Section 1. amends s. 287.042, F.S. providing an exemption to Department of Juvenile Justice providers from competitive bidding requirements.

Section 2. amends s. 790.22, F.S., eliminating a requirement for the Department of Juvenile Justice to file a form with the Office of Economic and Demographic Research.

Section 3. amends s. 984.06, F.S. clarifying the access of officials within the Department of Juvenile Justice to confidential juvenile court records.

Section 4. amends s. 985.201, F.S. relating to jurisdiction over juveniles.

Section 5. amends s. 985.2075, F.S. relating to the powers of youth custody officers.

Section 6. amends s. 985.213, F.S. providing the video-teleconferencing of detention hearings.

Section 7. amends s. 985.215, F.S. providing the video-teleconferencing of detention hearings.

Section 8. amends s. 985.231, F.S. providing the video-teleconferencing of disposition and other hearings.

Section 9. provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Juvenile Justice anticipates that the portion of the bill which permits juvenile hearings to be conducted by video teleconference will have a fiscal impact of \$312,000. Because 80% of circuit courts are already equipped for video teleconferencing, the \$312,000 figure is derived by calculating the cost of equipping the 26 detention centers at \$12,000 per center. There is also a cost of \$187,000 to operate the system at each center for six months and \$374,000 for the following year. However, this cost will be offset by a reduction in current transportation and personnel costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Recently, the Florida Supreme Court in In Re:Florida Rule of Juvenile Procedure 8.100(a), 796 So.2d 470 (Fla.2001) declined to adopt an amendment to a rule of juvenile procedure which would have given judges the option of conducting detention hearing via audio-visual devices. The proposed rule came out of a one-year pilot program in several circuits. The court received conflicting feedback from interested parties, particularly regarding the communication between public defenders and clients and families of clients. The court declined to adopt a rule which would allowed the video juvenile detention hearings statewide, although in a footnote the court did not give up on the possibility of consideration of the matter in the future.

Under the doctrine of separation of powers in Florida's Constitution, a person belonging to one branch of government may not exercise the powers appertaining to either of the other branches unless expressly provided. Article II, Section 3, Florida Constitution. Under Article V, Section 2(a) of the Florida Constitution, the Florida Supreme Court is granted exclusive authority to promulgate rules of practice and procedure for the courts of the state. The Florida Supreme Court has held that its power extends to matters of procedure, whereas matters of substance affecting the individual rights of the parties are left to legislative prerogative. In re Clarification of the Florida Rules of Practice and Procedure, 281 So.2d 204 (Fla. 1973). To the extent that the Florida Supreme Court, which has already considered a court rule addressing the same matter, could find that video-teleconferencing is a procedural matter, the bill may be unconstitutional.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill may have the effect of changing the jurisdiction the Department of Juvenile Justice and the courts over juvenile offenders committed to low-risk and moderate risk programs from 21 to 19. Section 985.201, F.S. provides that notwithstanding s. 985.231, F.S. a court has jurisdiction over juvenile until he or she reaches the age of 19. Under s. 985.231(1)(a)(3), F.S., a court may commit a youth to any commitment program until the age of 21. Some courts and officials with the Department of Juvenile Justice have interpreted these sections to mean that only those youths who have been committed high or maximum risk, but not to those youths committed low-risk or moderate risk. Though the length of time that youths may spend in a low or moderate risk program is relatively short, some moderate risk programs are a year in length. For example, a youth whose case was delayed for competency issues or whose offense was committed close to the youth's 18th birthday, may not have adequate time to complete a moderate risk program, if committed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2004, the Committee on Public Safety & Crime Prevention voted to pass the bill with a committee substitute. The committee substitute incorporated four amendments. One amendment removed language which expanded the arrest powers of a youth custody officer. Another amendment removed text exempting provider and contractors with the Department of Juvenile Justice from competitive bidding requirements. The amendment also added language which redefines the term "eligible user" in s. 287.012, F.S. to include contracted providers with the Department of Juvenile Justice. The final amendments would permit video teleconferencing for the following hearings: 48 hour detention reviews for children held secure for domestic violence charges, detention reviews for children in detention care held within 24 hours of arrest, 72 hour reviews of detention status after a child is held beyond a 21 day period because of continuance for cause, and transfer hearings or hearings related to progress by a child in a commitment program.