HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1917 CS PCB JUA 05-01 Juvenile Justice
SPONSOR(S): Justice Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Justice Appropriations Committee	5 Y, 3 N, w/CS	DeBeaugrine	DeBeaugrine
1) Juvenile Justice Committee	4 Y, 3 N, w/CS	White	White
2) Fiscal Council	9 Y, 6 N, w/CS	DeBeaugrine	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill accomplishes the following:

- It amends the definition of "fiscally constrained county" to expand the number of counties that qualify for state financial assistance for county detention costs.
- It reinstates the minimum-risk non-residential level of commitment, which was repealed by the Legislature in 2000, and provides that youth placed in this level shall participate in day treatment programs at least five days per week.
- It requires parents to pay $1 for each day that their child is in the minimum-risk non-residential level.
- It permits youth in the high-risk residential level to be temporarily released into the community for up to 72 hours with court approval and for specified reasons.
- It allows judges to choose a specific program for committed youth.
- It restricts the Department of Juvenile Justice's ability to move youth from one level of commitment to another without a judge's permission.
- It allows for high-risk programs to be environmentally secure in addition to hardware secure.
- It requires courts to place adjudicated youth in secure detention or home detention with electronic monitoring until disposition if the court makes specified findings.
- It recreates the Task Force on Juvenile Sexual Offenders and their Victims and requires it to report its findings and recommendations regarding specified subjects to the Governor and the Legislature.
- It creates a task force to study certification for juvenile justice provider staff and requires it to report its findings and recommendations regarding specified subjects to the Governor and the Legislature.
- It provides that the membership of juvenile justice county councils and circuit boards may, rather than must as in current law, consist of specified types of representation.

The bill takes effect on July 1, 2005.

Under the bill: (a) there would be an approximate $500,000 impact from expansion of the definition of fiscally constrained county; and (b) there may be up to $533,000 in additional detention costs to the Department of Juvenile Justice resulting from the bill's authorization for courts to specify commitment programs.

Additionally, as the bill may require counties to spend additional funds for juvenile detention costs during the post-adjudication/pre-disposition period, it could be subject to provisions of Article VII, Section 18 of the Florida Constitution dealing with local mandates. Please see the Constitutional Issues section of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide for limited government - The bill creates two task forces, the membership for which is to be appointed by the Governor, and assigns the task forces duties to review specified issues and to submit reports to the Governor and Legislature.

B. EFFECT OF PROPOSED CHANGES:

This bill implements the second and third whereas clauses of Senate Bill 4A that passed during the December 2004 special session and that transferred responsibility for costs of pre-trial detention for juveniles from the state to counties effective July 1, 2005. The whereas clauses envisioned a more comprehensive examination of the juvenile justice system and the specific Legislative findings in the second and third clauses were: (a) that use of current residential resources should be flexible to allow juveniles to be committed to less restrictive, less intensive placements; and (b) that judges should have more flexibility in committing delinquent youth to department programs.

Expansion of fiscally constrained counties:

The bill amends the definition of a "fiscally constrained county" contained in s. 985.2155(2)(b), F.S., so that it: (a) eliminates the requirement the county be designated as a rural area of critical economic concern under s. 288.0656; and (b) includes counties for which the value of a mill is no more than $4 million.

Background: The state currently operates detention centers. Under existing law, each county will have to pay the state for youth who reside in the county that are detained prior to adjudication starting July 1, 2005. Responsibility to operate intake and detention will remain with the state.

Current law provides for up to 100 percent state coverage of costs to fiscally constrained counties for pre-disposition detention. The existing definition leaves out two counties (Wakulla and Sumter) that are not within an area of critical economic concern that meet all other criteria. A third rural county (Highlands) meets the population criteria but the value of a mill is more than $3 million. The House General Appropriations Act contains sufficient funds to support the expanded definition of a fiscally constrained county and to fully cover expected cost increases associated with intake and detention screening.

Minimum-risk day treatment to be a commitment option:

The bill reinstates the minimum-risk nonresidential level as a commitment option for juveniles. Youth placed in this level have full access to, and reside in, the community, but must attend day treatment programming at least five days per week. Required day treatment services include case management, counseling, training to address delinquency risk factors, and facilitation of a youth's compliance with court-ordered sanctions. Like the low-risk level, youth found to have committed acts involving firearms, sexual offenses, or first degree or life felonies may not be placed in the minimum-risk level. The bill also specifies that minimum-risk commitments for second degree misdemeanors may last up to six months,[1] while the length of commitments for greater offenses remain, as in current law, limited to the maximum term of imprisonment that may be served by an adult.[2]

[1] The six month time frame for second degree misdemeanors is identical to the time frame statutorily permitted for probation imposed for a second degree misdemeanor. *See* Section 985.231(1)(a)1.a., F.S.
[2] Section 985.231(1)(d), F.S.

Background: Nonresidential services were once a commitment option for juvenile offenders, but were removed from the definition of commitment services during the 2000 session.[3] The repeal appears to have been based upon recommendations made by the Juvenile Justice Classification and Placement Workgroup (workgroup). After reviewing the differences in security for commitment levels, the workgroup recommended removal of the minimum-risk level and the transfer of that level's programs to probation, as it found little difference relative to security between minimum-risk non-residential programs and Probation/Community Control services.[4] [5]

Temporary release for committed youth:

The bill amends newly renumbered s. 985.03(46)(d), F.S., to permit youth in high-risk residential commitments to be temporarily released by the court for up to 72 continuous hours of community access if the youth has made successful progress in his or her program and needs: (a) to attend a family emergency; or (b) during the final 60 days of his or her placement, to visit his or her home, enroll in school or a vocational program, complete a job interview, or participate in a community service project.

The bill also amends newly renumbered s. 985.03(56), F.S., to specify that the definition of "temporary release" continues, as in current law, to only apply to residential commitments, even though the minimum-risk non-residential commitment level is added by the bill. Thus, under the bill, the decision to permit minimum-risk youth to temporarily leave a day treatment program is left to the discretion of the DJJ and its providers.

Background: Currently, under ss. 985.03(45)(c) and (d) and (55), and 985.231(1)(d), F.S., only youth placed in the low- and moderate-risk levels are eligible for court-approved temporary release from their commitments

Escape and absconding:

The bill amends references to escape[6] from commitment facilities contained in ss. 985.207 and 985.208, F.S., to clarify that this offense, continues to apply only to escapes from residential facilities, and to provide that a youth will be considered to have absconded from the department's supervision if he or she leaves a minimum-risk nonresidential program. Pursuant to current s. 985.215(2), F.S., an absconding youth may be taken into custody and detained. The bill amends this subsection to further provide that the court, at the detention hearing that must be held within 24 hours of taking a juvenile into custody, must release an absconding youth from detention and return him or her to the minimum-risk nonresidential program. Thereafter, under s. 985.404(4), F.S., the youth may be transferred by the department, after receiving prior written court approval, to another commitment level or program.

Background: Sections 985.208(2) and 985.215(2)(a), F.S., refer to the act of absconding by a juvenile from a department facility. These sections, however, do not specify the type of department facility from which a juvenile must leave to be considered to have committed the act of absconding. Because s. 985.3141, F.S., provides that the third degree felony of escape occurs when a youth leaves a residential commitment facility, it appears that, by default, the act of a youth leaving a nonresidential facility constitutes absconding. A juvenile may be taken into custody and placed into detention if he or she is alleged to have escaped or absconded.[7]

Expansion of judicial discretion regarding placement of committed youth:

[3] Section 18, 2000-135, Laws of Florida.
[4] There is some ambiguity regarding the source of the recommendation to move day treatment services from commitment status to probation. The 2000 staff analysis for HB 1759 refers to a workgroup recommendations document as the source. This document, however, cannot currently be located, even though it is referred to in the House analysis, as well as in DJJ workgroup meeting minutes and memos.
[5] *See* House of Representatives, Criminal Justice Appropriations Analysis for HB 1759, April 11, 2000, p. 5.
[6] Section 985.3141, F.S.
[7] Section 985.215(2)(a), F.S.

The bill would allow the court to specify a program or facility when committing the youth to the department. The department would be allowed to notify the judge of alternative placements for youth ordered into a high- or maximum-risk residential program or facility as space becomes available. The court would be prohibited from ordering a child to a program or facility that is not under contract with the department. The court would have to choose from three alternative programs or facilities if the court finds that space will not be available at the chosen program or facility to allow for placement within 45 days.

Background: Under current law, there are four levels of residential commitment programs: (1) low-risk, (2) moderate risk, (3) high-risk, and (4) maximum risk. The four levels are associated with various degrees of risk and restrictiveness.[8] *The court decides the commitment level, but not the specific facility within the identified commitment level.*[9]

Adjudication orders and post-adjudication/pre-disposition detention:

The bill amends s. 985.228(5), F.S., to require a court to impose conditions that include, but are not limited to, the following in a youth's order of adjudication of delinquency: (a) if the youth is not in secure detention, the conditions must require the youth to comply with a curfew; attend school or another educational program, if eligible; and obey the reasonable and lawful demands of his or her parents or legal guardians and, if applicable, persons supervising him or her in school or another educational program; and (b) if the youth is in secure detention, the conditions must require the youth to obey the reasonable and lawful demands of all persons responsible for the youth's supervision.

In s. 985.207, F.S., the bill provides that a youth, who has been found delinquent and is awaiting disposition, may be taken into custody if a court finds that the youth: (a) has a history of failing to appear for court proceedings; (b) is presently ungovernable as evidenced by his or her recent behavior; (c) presents a risk of failing to appear for future proceedings or of inflicting harm upon himself, herself, or others or the property of others because of his or her ungovernable behavior; or (d) has violated court-imposed conditions contained in his or her order of adjudication of delinquency. In s. 985.215(5)(d), F.S., the bill provides that if the court makes any of the aforementioned the court must place the youth in secure detention or in home detention with electronic monitoring until the disposition order is entered in the youth's case. The length of this detention may be in excess of the 15-day limit imposed in current law for post-adjudication/pre-disposition detention.

Background: Current law limits post-adjudication/pre-disposition secure, nonsecure, or home detention to 15 days.[10] *The only exception to this limitation, absent a new law violation, is that a youth may be held for an additional 9 days if the court finds that the prosecution or defense require additional time and the charge is a capital, life, or first degree felony or a second degree felony involving violence.*[11]

With regard to failure to appear, current law provides that a court may continue to detain a youth for specified periods of time:

- *If the youth has scored for detention on the risk assessment instrument; is charged with a second or third degree felony in violation of ch. 893, F.S., relating to drug abuse prevention and control, or with a third degree felony that is not a crime of violence; and has a record of failure to appear at court hearings. If these criteria are met, the court may detain the youth: (a) for up to 21 days pre-adjudication;*[12] *(b) 15-days post-adjudication/pre-disposition;*[13] *and (c) potentially until commitment*

[8] Chapter 985.203 (45), F.S.
[9] Chapter 985.231(1)(a)3., F.S.
[10] Section.985.215(5)(d), F.S.
[11] Section.985.215(5) (g), F.S.
[12] Section 985.215(5)(c), F.S.
[13] Section 985.215(5)(d), F.S.

placement, depending upon the restrictiveness level ordered, post-disposition/pre-commitment placement.[14]

- *Is detained on a judicial order for failure to appear and has previously, willfully failed to appear, after proper notice, for an adjudicatory hearing in the same case. If these criteria are met, the court may place the youth in secure detention for up to 72 hours before the next scheduled court hearing.*[15]
- *Is detained on a judicial order for failure to appear and has previously, willfully failed to appear, after proper notice, at two or more court hearings of any nature on the same case. If these criteria are met, the court may place the youth in secure detention for up to 72 hours before the next scheduled court hearing.*[16]

Transfer:

The bill amends s. 984.404(4), F.S., to require that the department receive written court approval prior to transferring a committed youth from one level of commitment to another or to a commitment program other than one specified by the court pursuant to s. 985.231, F.S.

Background: Under s. 985.404(4), F.S., the department may transfer a committed youth to a different commitment program or facility when necessary to appropriately administer the youth's commitment. The department must notify the court that committed the youth and any attorney of record of its intent to transfer a youth to a higher or lower commitment restrictiveness level. The court may agree to the transfer or may set a hearing to review the transfer. If the court does not respond within 10 days after receipt of the notice, the transfer is deemed granted.[17] *This transfer provision also applies to youth placed on conditional release.*[18]

Distinguishably, if a youth is placed on probation, the DJJ may not transfer the youth to a commitment program without first filing a petition alleging that the youth has violated his or her probation. The court is required to conduct a hearing and if the court finds a violation or if the youth admits to the violation, the court must enter a new disposition order and may impose any sanction it could have originally imposed, including commitment.[19]

Task Force on Juvenile Sexual Offenders and their Victims:

The bill repeals the Task Force on Juvenile Sexual Offenders and their Victims established in s. 985.403, F.S., and reestablishes the task force in an undesignated section of law. Under the bill, the DJJ must provide administrative support to the task force, and the Governor is required to appoint up to twelve members to the task force. Nine of the members must consist of the following representation: a circuit court judge, state attorney, and public defender, who each have at least one year's experience in the juvenile division; one representative of the DJJ; two representatives of providers of juvenile sexual offender services; one member of the Florida Juvenile Justice Association; one member of the Florida Association for the Treatment of Sexual Abusers, and one victim of a juvenile sex offense.

The bill requires the task force to make findings that include, but are not limited to: a profile of this state's juvenile sex offenders and of dispositions received; identification of statutes that address these offenders; a profile of acts committed by each juvenile placed in juvenile sexual offender programming between July 2000 and June 2005 and an assessment of the appropriateness of those placements; identification of community-based and commitment programming available for these offenders and of such programming's effectiveness; and identification of qualifications required for staff who serve these offenders. The bill further requires the task force to make specified recommendations and to report their findings and recommendations to the Governor and Legislature by December 1, 2005.

[14] Section 985.215(10), F.S.
[15] Section 985.215(2)(i), F.S.
[16] Section 985.215(2)(j), F.S.
[17] Section 985.404(4), F.S.
[18] Section 985.316(4), F.S.
[19] Section 985.231(1)(a)1.c., F.S.

The bill prohibits task force members from receiving salaries or travel and per diem expenses, and specifies that the task force is dissolved upon submission of its report.

Background: Section 985.403, F.S., provides for the Task Force on Juvenile Sexual Offenders and their Victims. The section states that the duties of the task force include:

- *Recommending standards for specially licensed professionals to work with juvenile sexual offenders and their victims and for certifying programs for the treatment of juvenile sexual offenders and their victims.*
- *Making recommendations regarding the use of Medicaid.*
- *Establishing training requirements and curricula for investigators, prosecutors, and judges.*
- *Assisting communities in establishing community networks.*
- *Providing an avenue for public awareness regarding the issue of juvenile sexually offending behavior.*
- *Recommending funding sources for services to be provided.*
- *Recommending quality assurance standards and outcome measures.*
- *Recommending statutory changes to facilitate prosecution of juvenile sexual offender cases.*

Representatives of the DJJ have indicated that the task force has not met in more than five years. Further, this task force has been in statute without being reenacted in excess of three years, which is the time limit imposed on statutory task forces under s. 20.03(8), F.S.

Task Force to study the certification of juvenile justice provider staff:

The bill creates an undesignated section of law requiring the creation of a task force to study the certification of juvenile justice provider staff. The department must provide administrative support and the Governor is required to appoint up to twelve members to the task force. Ten of the members must consist of the following representation: two representatives of the DJJ; two representatives of providers of juvenile justice services; two members of the Florida Juvenile Justice Association; two provider employees who provide direct care services; and two representatives of the Florida Certification Board.

The bill requires the task force to consider, and make recommendations concerning, per diem levels, the occupational levels of staff subject to certification, the criteria that may be used to certify staff, the levels of certification, and a process for testing and validating the effectiveness of any recommended staff certification system. Additionally, the task force is required to make findings regarding the benefits of a staff certification system for this state's juvenile justice programming and the cost to implement such a system. These findings and recommendations must be reported to the Governor and Legislature by January 1, 2006.

The bill prohibits task force members from receiving salaries or travel and per diem expenses, and specifies that the task force is dissolved upon submission of its report.

Other provisions:

The bill strikes references to the term "juvenile prisons" in ss. 943.0515, 985.03, 985.201, and 985.313, F.S. The term "juvenile correctional facility" continues to be used in these sections to refer to maximum-risk facilities.

The bill amends newly renumbered s. 985.03(46)(d), F.S., to permit high-risk residential commitment facilities to be environmentally secure or hardware-secure with perimeter fencing and locking doors. Current law only permits the latter option for this level.

The bill amends s. 985.231(1)(d), F.S., to provide that mandatory reports regarding a committed youth's treatment plan progress and adjustment-related issues may be provided to the court on a quarterly basis, unless the court requests monthly reports. Current law requires the reports to be given to the court on a monthly basis.

The bill amends s. 985.2311(1)(a), F.S., to require courts to order parents of youth committed to the minimum-risk level to pay $1 per day that the child is in such status. This same requirement exists in current law for home detention and probation.

The bill amends s. 985.4135(2), F.S., to require juvenile justice county councils to develop, with the cooperation of specified local officials, criteria to be considered by law enforcement officers prior to referring youth to juvenile assessment centers. The bill also amends s. 985.4135(10), F.S., to provide that the membership of juvenile justice county councils and circuit boards may, rather than must as in current law, consist of specified types of representation.

Several provisions of current law are reenacted to incorporate changes to sections that are amended by the bill.

The bill provides for an effective date of July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 943.0515, F.S., to strike references to "juvenile prison."

Section 2. Amends s. 985.03, F.S., to define "day treatment"; to clarify that counties are responsible for intake and detention operations; to shift the description of day treatment programs contained in the definition of "probation" to the newly created "day treatment" definition; to redesignate the term "residential commitment level" as "restrictiveness level"; to add the minimum-risk nonresidential level to the continuum of commitment restrictiveness levels; to allow temporary release for high-risk youth; to provide that high-risk residential commitment facilities may be environmentally secure; and to strike references to the term "juvenile prison."

Section 3. Amends s. 985.201, F.S., to strike references to "juvenile prison."

Section 4. Adds s. 985.207(1)(e) , F.S., to provide that an adjudicated youth awaiting disposition may be taken into custody when a court makes specified findings; to provide for the act of absconding from a nonresidential commitment facility; and to clarify that the offense of escape, as provided for in s. 985.3141, continues to only apply to escapes from residential commitment facilities.

Section 5. Amends s. 985.208, F.S., to provide for the act of absconding from a nonresidential commitment facility; and to clarify that the offense of escape, as provided for in s. 985.3141, continues to only apply to escapes from residential commitment facilities.

Section 6. Amends s. 985.213(1)(f) , F.S., to provide a cross-reference to the criteria for taking youth into custody as created by the bill in s. 985.207(1)(e), F.S.

Section 7. Amends s. 985.215, F.S., to provide for the act of absconding from a nonresidential commitment facility; to clarify that the offense of escape, as provided for in s. 985.3141, continues to only apply to escapes from residential commitment facilities; to specify procedures and time limitations applicable to detention imposed for youth who have absconded; to provide that post-adjudication/pre-disposition may be extended beyond 15 days for specified court findings; and to make conforming changes for the reinstatement of the minimum-risk nonresidential commitment level.

Section 8. Amends s. 985.2155(2)(b), F.S., to redefine the term "fiscally constrained county."

Section 9. Amends s. 985.228(5), F.S., to require courts to impose specified conditions in delinquency adjudication orders.

Section 10. Amends s. 985.231(1) , F.S., to permit a court to commit a youth to the minimum-risk non-residential level; to allow a judge to order youth to a specified program or facility within the restrictiveness level to which the youth has been committed; to provide that a minimum-risk

nonresidential commitment for a second degree misdemeanor may be for a period up to six months; to provide that commitment reports may be submitted quarterly, rather than monthly; and to make conforming changes for the bill's amendments to the chapter's definition section.

Section 11. Amends s. 985.2311(1), F.S., to provide that parents of delinquent youth placed in the minimum-risk nonresidential restrictiveness level must be court-ordered to pay $1 for each day that the youth is supervised.

Section 12. Amends s. 985.313, F.S., to strike references to "juvenile prison."

Section 13. Amends s. 985.316(3), F.S., to clarify that conditional release continues, as in current law, to only apply to releases from residential commitment programs.

Section 14. – Repeals s. 985.403, F.S., which establishes the Task Force on Juvenile Sexual Offenders and their Victims.

Section 15. – Creates an undesignated section of law to require the creation of the Task Force on Juvenile Sexual Offenders and their Victims by August 1, 2005; requires the task force to make findings and recommendations regarding specified issues; provides that the Governor shall appoint up to 12 members to the task force and specifies required representation; requires the task force to submit a report to the Governor and the Legislature by December 1, 2005; provides that members shall not receive salaries and prohibits reimbursement for travel and per diem expenses; provides that the task force is dissolved upon submission of its report.

Section 16. – Creates an undesignated section of law to require the creation of a task force to study the certification of juvenile justice provider staff by August 1, 2005; requires the task force to make findings and recommendations regarding specified issues; provides that the Governor shall appoint up to 12 members to the task force and specifies required representation; requires the task force to submit a report to the Governor and the Legislature by January 1, 2006; provides that members shall not receive salaries and prohibits reimbursement for travel and per diem expenses; provides that the task force is dissolved upon submission of its report.

Section 17. – Amends s. 985.404(4), F.S., to require written court approval for department transfers of youth from one commitment level to another or to a program other than that designated by the court.

Section 18. – Amends s. 985.4135(2) and (1), F.S., to require juvenile justice county councils to develop criteria for juvenile assessment center referrals and to provide that the membership of juvenile justice county councils and circuit boards may, rather than must as is provided in current law, consist of specified representation.

Sections 19--25. Amends ss. 784.075, 984.05, 985.31, 985.3141, 985.201, 985.233, and 985.311, F.S., to make conforming cross-reference corrections and for the purpose of incorporating amendments by the bill to other sections of law.

Section 26. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

There would be an approximate $500,000 impact from expansion of the definition of fiscally constrained county.

The department also indicates that the bill's amendments to s. 985.231, F.S., which permit courts to specify commitment programs, may result in additional post-disposition detention costs. According to the department, the average length of stay in post-disposition detention while awaiting placement in a commitment program is 13 days. Under the bill, the court is permitted to specify a commitment program so long as placement occurs within 45 days (thereby, according to the DJJ, permitting an additional 32 days in detention). The department states that this may generate up to an approximate $533,600 fiscal impact for additional detention costs.

The bill's creation of two task forces will not generate costs for the salary, travel, or per diem of members as such payments are prohibited by the bill. The DJJ estimates that it will cost $800 to provide administrative support to the two task forces.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill's amendments to ss. 985.207 and 985.215, F.S., which authorize courts to extend secure detention beyond the 15-day limit provided by current law for certain adjudicated juveniles may result in additional costs being billed to counties. Section 985.2155, F.S., as amended by ch. 2004-263, L.O.F., takes effect on July 1, 2005 and requires that the counties pay the costs of detention care provided by the DJJ for juveniles prior to final disposition. Testimony before the fiscal council by the public defenders indicates that courts already have the ability to order youth into custody under similar circumstances. Thus, the impact of these provisions is estimated to be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The expansion of commitment options may result in more rapid movement of youth through pre-trial and post-adjudication detention and more utilization of less expensive day treatment nonresidential programs, rather than residential programs. This would result in lower costs for both the counties and the state. Representatives of the department have indicated that the per diem for probation day treatment programs is $45, whereas the per diem for low-risk residential ranges from $78 to $87. The House version of the General Appropriations Act contains a net reduction of $3.7 million from the elimination of 200 residential commitment beds and the addition of 200 lower-cost day treatment slots.

The current version of the House General Appropriations Act contains funding necessary to support the expanded definition of a fiscally constrained county.

See also, "III. Comments, C. Drafting Issues or Other Comments," *infra.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, Section 18 provides in pertinent part that:

(a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

The bill could increase pre-disposition utilization of detention that could increase costs charged to counties. Since the courts already have the ability to order youth into custody under similar circumstances, the impact of these provisions are primarily to reinforce existing authority. Thus, the impact of these provisions is estimated to be insignificant. Subsection (d) of Article VII, Section 18 exempts laws with an insignificant impact from the provisions of the section.

2. Other:

The Department of Juvenile Justice and the public defenders have raised the following concerns:

The bill amends ss. 985.207 and 985.215, F.S., to provide that a youth awaiting disposition may be taken into custody and detained until disposition when a court finds that the child has engaged in ungovernable behavior or has violated conditions imposed by the court in the youth's adjudication order.

- Statutes are constitutionally required to be specific enough to give persons of common intelligence and understanding adequate warning of the proscribed conduct. *Trushin v. State,* 425 So.2d 1126, 1130 (Fla.1982). The bill does not define the term "ungovernable" and as such, the bill may be subject to constitutional void-for-vagueness challenges arguing that it fails to describe with certainty the conduct which is prohibited. This issue may be avoided by amending the bill to define the term "ungovernable behavior."

- The Florida Supreme Court has stated that, "[A]ny restriction on a person's liberty, juvenile or adult, can only occur if the proper procedural safeguards are followed. Thus, any type of detention requires that a child be accorded every constitutional safeguard. *See, e.g., In re Gault,* 387 U.S. 1, 31-59, 87 S.Ct. 1428, 1445-60, 18 L.Ed.2d 527 (1967) (holding that the Due Process Clause of the federal constitution guarantees juveniles in delinquency proceedings that may result in commitment to an institution the right to counsel, the right to confront witnesses, the right to invoke the Fifth Amendment privilege against self-incrimination, and adequate parental notice of the hearing and the specific charges)." *A.A. v. Rolle,* 604 So.2d 813, 817 (Fla. 1992). Accordingly, in order to insure such procedural safeguards are provided to youth, ss. 985.216 and 985.228, F.S., specify due process requirements for juvenile contempt of court proceedings and adjudicatory hearings on delinquency petitions, e.g., youth are entitled to counsel, to confront witnesses, introduce evidence, etc. Unlike these sections, the bill does not specify what due process requirements apply to its authorization for courts to extend detention when the court finds that a youth has engaged in ungovernable behavior or has violated adjudication order conditions. Presumably, courts would accord due process in making the findings specified by the bill; however, if a court did not, the bill might be challenged on due process grounds. This issue may be avoided by amending the bill to clarify the applicable due process requirements.

B. RULE-MAKING AUTHORITY:

The department is required to adopt rules to establish statewide standards for county operated juvenile programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Juvenile Justice Committee adopted seven amendments to this bill on April 13, 2005, which accomplished the following: (a) removed the bill's amendments to s. 985.215(10)(a)1., F.S., relating to detention time frames for committed youth; (b) clarified in s. 985.2155(3)(a), F.S., that counties are responsible for the operation of, and payment of all costs associated with, intake, detention screening, and detention care prior to final disposition; (c) clarified in s. 985.03(18), F.S., that the department remains responsible for post-disposition detention care; (d) provided in s. 985.03(30), F.S., that a juvenile probation officer may be an agent of the county or the department; (e) eliminated the use of the term "ungovernable" in ss. 985.207(1)(e), F.S.; (f) amended s. 985.215, F.S., to provide for the extension of post-adjudication/pre-disposition detention when the court makes specified findings; (g) amended ss. 985.207, 985.208, and 985.215, F.S., to provide for the act of absconding from a nonresidential commitment facility and to clarify that the offense of escape continues to only apply to residential commitment facilities; (h) amended s. 985.404(4), F.S., to restrict the department's transfer authority; and (i) amended s. 985.4135(2), F.S., to provide new duties for juvenile justice county councils.

The Fiscal Council adopted a committee substitute on April 22, 2005, which accomplished the following: (a) removed the bill's provisions that shifted operational and fiscal responsibility for juvenile intake, detention screening, and pre-disposition detention to the counties; (b) expanded the definition of "fiscally constrained county"; (c) permits youth in the high-risk restrictivness level to be court-approved for community access; (d) requires secure detention or home detention with electronic monitoring for adjudicated youth found to be ungovernable; (e) permits up to 24 hours secure detention for youth who abscond from the minimum-risk restrictiveness level; (f) permits quarterly commitment progress reports; (g) recreates the Juvenile Sexual Offender Task Force; (h) creates a task force to study juvenile justice provider certification; and (i) provides that juvenile justice councils and boards may, rather than must, consist of specified representation.