

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 335 CS Juvenile Justice
SPONSOR(S): Culp
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 456

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|----------------|---------|----------------|
| 1) Juvenile Justice Committee | 6 Y, 0 N, w/CS | White | White |
| 2) Criminal Justice Appropriations Committee | | | |
| 3) Justice Council | | | |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

Statute currently requires electronic monitoring for home detention imposed in lieu of a consequence unit for probation and conditional release violations. The funding appropriated by the Legislature for such monitoring has been vetoed during the past two fiscal years. The bill amends statute to provide that the electronic monitoring requirements are subject to appropriation.

The bill also amends statute to authorize a court to detain an adjudicated youth in secure detention or on home detention with electronic monitoring until disposition if the youth has a history of willfully failing to appear at any previous delinquency court proceedings or has violated conditions governing his or her behavior, which must be specified by the court in the youth's adjudication order. Distinguishably, under current law: (a) a youth may be placed in post-adjudication/predisposition detention for a maximum of 15 days, not until disposition; (b) current criteria permitting detention for failure to appear apply only where the youth has failed to appear in the case at bar; and (c) a court is not required to specify conditions in a youth's adjudication order.

Finally, the bill revises annual reporting requirements applicable to the Department of Juvenile Justice (DJJ) by: (a) repealing requirements for individual annual reports on juvenile justice subjects where such data is duplicative of data reported in other publications; (b) reorganizing the section's contents more logically and removing obsolete terms and outdated provisions; (c) reinstating the requirement for publication of an annual Outcome Evaluation Report by the DJJ; and (d) amending provisions relating to the Program Accountability Measures Report to accurately describe the cost-effectiveness model currently implemented and to permit the report to be submitted on January 15th, rather than December 31st of each year.

The only provisions of this bill expected to generate a fiscal impact are those permitting the placement of adjudicated youth in secure detention or on home detention with electronic monitoring until disposition in specified circumstances. Fiscal data regarding this impact has been requested, but has not yet been received, from the DJJ. Increased detention costs under the bill will be shared as follows: (a) non-fiscally constrained counties will be responsible for the costs of predisposition, secure detention; and (b) the state will be responsible for the costs of predisposition, secure detention for fiscally constrained counties and for the costs of home detention with electronic monitoring. Although the bill may require counties to expend funds, it does not appear to implicate the prohibition against unfunded local mandates contained in Article VII, Section 18 of the Florida Constitution. See Fiscal Analysis & Economic Impact Statement and Applicability of Municipal/County Mandates Provision.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill eliminates statutory requirements for separate reports on specified juvenile justice subjects where this information is also reported in other publications that comprehensively address all juvenile justice programs.

Promote personal responsibility—The bill requires courts to impose conditions relating to curfew compliance, school attendance, and proscriptions against ungovernable behavior in adjudication orders, which must be followed by youth until disposition. The bill increases the availability of predisposition detention for adjudicated youth by authorizing secure detention or home detention with electronic monitoring until disposition where an adjudicated youth has a history of willfully failing to appear in delinquency proceedings or has violated adjudication order conditions.

B. EFFECT OF PROPOSED CHANGES:

Electronic monitoring of home detention: Sections 985.215(2)(h) and 985.231(1)(a)1.c.l., F.S., provide that youth who have violated probation, postcommitment probation, or conditional release supervision may be held in a consequence unit, if available, or placed on home detention with electronic monitoring. Currently, there are no consequence units available. Additionally, electronic monitoring for home detention is not funded because the Governor has vetoed the Legislature's appropriation for such monitoring during the past two fiscal years.¹

Effect of bill: The bill amends ss. 985.215(2)(h) and 985.231(1)(a)1.c.l., F.S., to condition the requirement of electronic monitoring for home detention upon legislative appropriation. In other words, under the bill, if there is no appropriation for electronic monitoring, home detention without electronic monitoring may be imposed in lieu of a consequence unit.

Predisposition detention: Under s. 985.215, F.S., a court, in determining whether to order secure, nonsecure, or home detention for a youth, must use the results of the risk assessment instrument (RAI) completed by a juvenile probation officer. The RAI incorporates the criteria for detention set forth in s. 985.215(2), F.S., which provide that a youth may be detained if he or she:

- Is alleged to have escaped or absconded;
- Is wanted in another jurisdiction for a felony;
- Has requested detention for his or her personal safety;
- Is charged with:
 - A capital, life, or first degree felony.
 - A second degree felony other than a drug offense under ch. 893, F.S.
 - A violent third degree felony.
 - A second or third degree felony drug offense under ch. 893, F.S., or a third degree non-violent felony and the youth has a record of failure to appear; a record of law violations prior to court hearings; has already been detained or has been released is awaiting disposition; has a record of violent conduct resulting in physical injury; or is found to have been in possession of a firearm.
- Is alleged to have violated probation or conditional release.

If the RAI results do not warrant detention based on the aforementioned criteria, the court may not order detention for the youth unless: (a) the youth is charged with specified domestic violence offenses or with possession or discharge of a firearm on school property;² (b) the youth is detained on a judicial

¹ See Veto Message Fiscal Year 2005-2006 (veto of specific appropriation 1076A).

² Section 985.215(2)(d) and (e), F.S.

order for failure to appear and has previously failed to appear for an adjudicatory hearing or at two or more hearings in the same case;³ or (c) the court enters written reasons for a deviation from the RAI results.⁴

If the youth is detained by the court, the maximum amounts of time in secure, nonsecure, or home detention that may be imposed are 21-days pre-adjudication and 15-days post-adjudication/predisposition, except that in either case detention may be extended 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; thus, if such additional time is granted by the court, a maximum of 30-days pre-adjudication or 24-days post-adjudication/predisposition may be imposed.⁵

Effect of bill: The bill enables a court to place an adjudicated youth in secure detention or on home detention with electronic monitoring until disposition in the following two circumstances.

First, the bill amends s. 985.228(5), F.S., to require a court to specify conditions in the delinquent's order of adjudication, which must be followed by the youth until disposition and which must include, but are not limited to:

- *If the youth is not in secure detention, the conditions must require the youth until disposition to comply with a curfew and attend school or another educational program if eligible and must prohibit the youth from engaging in ungovernable behavior.*
- *If the youth is in secure detention, the conditions must prohibit the youth from engaging in ungovernable behavior.*

The bill defines "ungovernable behavior" as: (a) failing to obey a parent, legal guardian, or person responsible for supervising the youth in school, an educational program, or secure detention; (b) engaging in behavior that evidences a risk that the youth may fail to appear at future court proceedings or may inflict harm upon others or the property of others; and (c) other behavior specified in writing by the court.

If a youth willfully violates an adjudication order condition, the bill creates s. 985.207(1)(e), F.S., to authorize a law enforcement officer to take the youth into custody and provides in s. 985.228(5)(d), F.S., that the court may hold the youth in contempt of court under s. 985.216, F.S., for such violation. The bill specifies that the sanctions for such contempt of court are placement in secure detention or on home detention with electronic monitoring until disposition.

Second, the bill creates s. 985.215(2)(k), F.S., to authorize a court to place an adjudicated youth in secure detention or on home detention with electronic monitoring until disposition if the youth has previously willfully failed to appear, after proper notice, at prior delinquency court proceedings. The bill specifies that a youth's failure to keep the clerk of court and defense counsel informed of a current mailing address does not excuse a youth's nonappearance at hearings.

Reporting requirements: Currently, ss. 985.31(1)(a)4. and 985.311(1)(a)4., F.S., require the Department of Juvenile Justice (DJJ) to annually provide written reports to the Governor, Attorney General, and Legislature on the performance of: (a) serious or habitual juvenile offender (SHO) programs; and (b) intensive residential treatment (IRT) programs. Performance data for SHO and IRT programs, which are high-risk commitment programs, is also reported in the following annual written reports published by the DJJ pursuant to s. 985.412, F.S.:⁶

³ Section 985.215(2)(i) and (j), F.S. (authorizing a youth with such failure to appear record to be held in secure detention for up to 72 hours prior to the next scheduled court hearing).

⁴ Section 985.215(2), F.S.

⁵ Section 985.215(5)(g), F.S.

⁶ See 2005 Outcome Evaluation Report, February 15, 2005, pp. 83-112; 2005 Program Accountability Measures Report, December 2004, pp. 15, 19-20, 28, 35, 40, 44, 47, 55-56, 58; and 2005 Quality Assurance Report, January 2006, at pp. 286-291, 303, and 314.

- Outcome Evaluation (OE) Report -- This report is submitted to the Legislature each year by February 15th,⁷ and it includes referral, offense type, demographic profile, length of stay, program completion, and recidivism data for all programs offered in the DJJ's four branches, i.e., Prevention and Victim Services, Detention, Probation and Community Corrections, and Residential Corrections. Prior to 2002, the Juvenile Justice Advisory Board (JJAB) was responsible, under s. 985.401, F.S., for completion of the OE Report. After the sunset of the JJAB on June 30, 2001, the DJJ assumed responsibility for the report. Currently, there is no statutory description of the contents of the OE Report, as this was repealed with the sunset of s. 985.401, F.S.; however, references to outcome evaluations of DJJ programs continue to be made in ss. 985.404(10)(d) and 985.412(4)(a), F.S.⁸
- Program Accountability Measures (PAM) Report – This report is required by s. 985.412(4)(a), F.S., to be submitted to the Legislature each year by December 31st,⁹ and it contains PAM scores for each DJJ commitment program. A PAM score consists of a program recidivism effectiveness measure and a cost effectiveness measure. Recidivism effectiveness is calculated as the standardized difference between the program's expected recidivism and observed recidivism. Cost effectiveness is calculated as the standardized difference between each program's average cost per youth completing the program and the statewide average cost per completion of \$34,083.¹⁰
- Quality Assurance (QA) Report – This report is required by s. 985.412(5), F.S., to be submitted to the Legislature each year by February 1st,¹¹ and it contains the following for each DJJ program: (a) a description of the population served; (b) a description of the services offered; (c) the program's QA rating;¹² and (d) cost data.

Additionally, s. 985.317(5), F.S., requires the DJJ to annually report to Legislature by January 1st on the implementation and progress of literacy programs offered in residential facilities. Information about educational programs in juvenile justice facilities is also required by s. 1003.52(19), F.S., to be annually reported to the Legislature by February 1st of each year by the DJJ and the Department of Education (DOE). The subsection specifies that this report must: (a) describe progress made toward developing effective educational programs for juvenile delinquents; (b) include funding data and QA review scores for each educational program; and (c) recommendations for system improvement.

Effect of bill: The bill repeals:

- *Sections 985.31(1)(a)4., and 985.311(1)(a)4., F.S., to eliminate the requirements for separate annual reports on the performance of SHO and IRT programs, as this information is duplicative of data reported in the DJJ's annual OE, PAM, and QA reports.*
- *Section 985.317(5), F.S., to eliminate the requirement of a separate annual report on the implementation and progress of the literacy programs, as information on juvenile justice education programs is also reported in the DJJ's and DOE's annual education report required by s. 1003.52(19), F.S..*

Further, the bill amends s. 985.412, F.S., which currently requires annual PAM, cost data, and QA reports, to:

- *Reorganize the section's contents more logically, rename the section to more accurately reflect its contents, and add subsection titles to readily identify each subsection's contents.*

⁷ Data reported in the 2005 OE Report was based upon programs that released youth between July 1, 2002 and June 30, 2003.

⁸ Section 985.412(4)(a), F.S., continues to reference, ". . . the standard methodology developed under s. 985.401(4) for interpreting program outcome evaluations . . ."; however, as indicated above s. 985.401, F.S., sunset on June 30, 2001.

⁹ Data reported in the 2005 PAM Report was based upon 151 programs that had released at least 15 youth between July 1, 2001 and June 30, 2003.

¹⁰ See 2005 Program Accountability Measures Report, December 2004 at p. 5.

¹¹ Data reported in the 2005 QA Report was based upon QA reviews conducted during calendar year 2005.

¹² QA ratings are based upon evaluation of the following three elements: (1) level of performance and quality of services; (2) immediate and long-term outcomes; and (3) cost. See An Introduction to Florida's Juvenile Justice Quality Assurance System, Department of Juvenile Justice, May 2004, p. 4.

- *Revise the definition section by:*
 - *Substituting the term “youth” for the obsolete term “client” to more accurately reflect the population served by the DJJ.*
 - *Adding the term “program” to mean a department-operated or contracted facility, service, or program for youth.*
 - *Repealing the term “program effectiveness” as it is no longer used in the section.*
 - *Adding the term “program group” to mean a collection of programs with sufficient similarity of function, services, and youth to permit comparisons among programs within the group.*

- *Reinstate the statutory requirement for an annual OE Report. As discussed above, this requirement was repealed with the sunset of the JJAB in 2001; however, outcome evaluations of DJJ programs continue to be referenced in ch. 985, F.S., and the DJJ continues to produce the report. The bill:*
 - *Requires the DJJ, in consultation with specified others, to develop and utilize a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group.*
 - *Specifies that the standard methodology should incorporate performance-based budgeting measures; must include common terminology and operational definitions; and must specify program outputs and desired youth outcomes for each program and program group.*
 - *Requires the OE Report to be annually submitted to the Legislature and Governor by February 15th and specifies that the report must identify and describe the standard methodology implemented; programs offered within each program group; the demographic profile and offense history of youth served in each program group; and actual program outputs and youth outcomes achieved in each program group.*

- *Eliminate the requirement in s. 985.412(3), F.S., for a separate annual cost data report. A similar requirement for annual cost data reporting is added to the description of mandatory QA Report contents at subparagraph (5)(g)4. Like current law, the bill’s cost data reporting provision requires use of a uniform format to allow cost comparisons among programs and requires inclusion of the cost of educational programs in the cost reported for residential programs. At the request of the DJJ, the bill removes current law’s requirements for: (a) the inclusion of market equivalent rent in the cost of state operated services, as according to the DJJ, such inclusion is not current practice and would require the hiring of consultants to conduct a market analysis; and (b) a cost benefit analysis to be implemented for juvenile justice educational programs, as according to the DJJ and DOE, cost data and quality assurance review scores are required to be annually reported under s. 1003.52(19), F.S., for all juvenile justice educational programs in the state.*

- *Revise the statutory description of the cost-effectiveness model utilized for the PAM Report to: reflect the model currently being implemented, i.e., a comparison of program costs to expected and actual youth recidivism rates; and change the PAM report due date from December 31st until January 15th.*

- *Eliminate outdated provisions relating to incentive and disincentive proposals and liquidated damages.*

C. SECTION DIRECTORY:

Section 1. Creates s. 985.207(1)(e), F.S., to authorize a law enforcement officer to take a youth into custody if the officer has probable cause to believe the youth violated conditions in his or her adjudication order.

Section 2. Amends s. 985.215(2) and (5)(d) and (g), F.S., to: provide that home detention imposed in lieu of a consequence unit shall, subject to legislative appropriation, be with electronic monitoring; provide that adjudicated delinquents with a history of willful failure to appear at delinquency court proceedings may be detained until disposition; and make conforming changes.

Section 3. Amends s. 985.228(5), F.S., to: require a court to include specified conditions in an order of adjudication of delinquency; define the term “ungovernable behavior”; provide that a youth may be held in contempt of court for failing to comply with adjudication order conditions; and provide detention sanctions for such contempt of court.

Section 4. Amends s. 985.231(1)(a)1.c., F.S., to provide that home detention imposed in lieu of a consequence unit shall, subject to legislative appropriation, be with electronic monitoring.

Section 5. Repeals s. 985.31(1)(a)4., F.S., to eliminate the requirement of an annual report on the performance of SHO programs.

Section 6. Repeals s. 985.311(1)(a)4., F.S., to eliminate the requirement of an annual report on the performance of IRT programs.

Section 7. Repeals s. 985.317(5), F.S., to eliminate the requirement of annual report on the implementation and progress of residential literacy programs.

Section 8. Amends s. 985.412, F.S. to: rename the section; reorganize the section’s contents more logically; add subsection headings; revise definitions; specify the contents of OE Report; transfer separate cost data reporting requirements to QA reporting requirements; repeal specified cost data reporting requirements; revise the PAM report’s cost-effectiveness model; change the PAM report due date; revise QA reporting requirements; repeal outdated requirements regarding incentive and disincentive proposals and liquidated damages.

Section 9. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Under the bill, an adjudicated youth, notwithstanding his or her RAI results:

- May be placed by the court in secure detention or on home detention with electronic monitoring until disposition if the youth has a history of willfully failing to appear at prior delinquency proceedings.
- Must be placed by the court in secure detention or on home detention with electronic monitoring until disposition if the court finds the youth in contempt of court for having violated adjudication order conditions.

With these two circumstances, the bill creates the potential for greater post-adjudication/predisposition detention than that authorized by current law to the extent that: (a) a youth, who does not qualify for detention under existing statutory detention criteria, qualifies under the bill’s new detention criteria; and (b) the period of time occurring between adjudication and disposition is longer than the 15- or 24-day detention maximum currently authorized. Fiscal impact data regarding the amount of increased detention (secure detention and home detention with electronic monitoring) costs that may be generated by the bill has been requested from the DJJ.

Responsibility for detention costs that may be generated by the bill will be as follows:

- Counties will be responsible for the costs of predisposition, secure detention.¹³
- The state will be responsible for the costs of predisposition, secure detention for fiscally constrained counties¹⁴ and for the costs of home detention with electronic monitoring.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

As discussed above in "2. Expenditures" of section "A. Fiscal Impact on State Government," counties will be responsible for the costs of predisposition, secure detention, which may be generated by the bill. Fiscal impact data has been requested from the DJJ.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to data provided by the DJJ, the OE, QA, and PAM reports discussed in this bill analysis are produced by department employees in the Bureau of Quality Assurance and Office of Research and Planning and through contracted services costing \$352K annually, which are provided by the Justice Research Center (JRC). In addition to the aforementioned services, the JRC provides the following to the DJJ: (a) monthly data extracts; (b) performance based budgeting data and reports; (c) contract status reports; and (d) monthly reports on commodity and contractual service purchases from Minority Business Enterprises.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, Section 18 of the Florida Constitution 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

¹³ Section 985.2155, F.S., requires non-fiscally constrained counties to pay the costs of secure detention care provided by the DJJ for youth prior to "final court disposition." The term "final court disposition" is not defined for purposes of s. 985.2155, F.S.; however, the term "disposition hearing" is defined in s. 985.03(22), F.S., for purposes of ch. 985, F.S., to mean, "a hearing in which the court determines the most appropriate dispositional services in the least restrictive available setting provided for under s. 985.231, in delinquency cases." Detention is not a dispositional service provided for in s. 985.231, F.S. Accordingly, secure detention imposed under the bill for adjudicated youth, whether for a history of failure to appear or for contempt of court for an adjudication order violation, will have occurred prior to "final court disposition," and as such, non-fiscally constrained counties will be responsible for its cost.

¹⁴ If a county is deemed fiscally constrained, the state is responsible for payment of that county's secure detention costs. Section 985.2155(4), F.S. The term "fiscally constrained county" is defined to mean, ". . . a county designated as a rural area of critical economic concern under s. 288.0656 for which the value of a mill in the county is no more than \$3 million . . ." Section 985.2155(2)(b), F.S.

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.

Paragraph (18)(d) of Article VII provides for several exemptions to the above-described constitutional prohibition against unfunded local mandates. Among these exemptions are: laws having insignificant fiscal impact, i.e., estimated to be an impact less than \$1.7 million; criminal laws; and laws determined by the Legislature to fulfill an important state interest and which apply to all similarly situated persons, including the state and local governments, or which are enacted by a 2/3rds vote of the Legislature.

Fiscal data regarding the bill's potential for increased county secure detention costs has not yet been received from the DJJ; thus, it is yet unknown whether the bill's fiscal impact is insignificant. However, even if the bill's fiscal impact on counties is significant, the bill's provisions appear to constitute criminal law as they relate to the imposition of predisposition, secure detention for youth who have been adjudicated for a violation of criminal law. As such, the bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution.¹⁵

To insure that the bill is exempt, the Legislature may wish to amend the bill to include a provision declaring that the bill fulfills an important state interest. If the bill contained this provision, it appears that it would be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, as the bill applies to all similarly situated persons, including the state and local governments. Further, the bill would also fall within an exemption if it contained the important state interest provision and were passed by a 2/3rds vote of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Juvenile Justice Committee adopted three amendments to this bill on February 8, 2006, which accomplished the following: (a) amended s. 985.412, F.S., to revise DJJ annual reporting requirements; (b) amended ss. 985.207, 985.215, and 985.228, F.S., to enable a law enforcement office to take a youth into custody for violating adjudication order conditions and to enable a court to securely detain an adjudicated youth until disposition if he or she has a history of willfully failing to appear in prior delinquency court

¹⁵ This issue of whether the juvenile delinquency provisions of ch. 985, F.S., constitute criminal law for purposes of the exemptions in Article VII, Section 18(d) of the Florida Constitution has not been addressed in precedentially binding by Florida case law. It appears, however, that such juvenile delinquency provisions do constitute criminal law given that: (a) juveniles are subject to the same criminal law proscriptions applicable to adults; and (b) the United States Supreme Court has recognized that numerous constitutional due process protections applicable to criminal defendants must also be afforded to juveniles who are alleged to be delinquent, e.g., notice of charges, right to counsel, privilege against self-incrimination, right to confrontation and cross-examination, proof beyond a reasonable doubt, and double jeopardy. See *N.C. v. Anderson*, 882 So.2d 990 (Fla. 2004); *Compare Florida Association of Counties v. State of Florida*, Order on Cross Motions for Summary Judgment, Second Judicial Circuit for Leon County, Case Nos. 2004-A-001398 and 2004-CA-1757 (holding that s. 985.2155, F.S., specifying the fiscal obligation of counties for secure detention, was a local government law, not a criminal law that applies to criminal acts or to convicted or adjudicated delinquent persons).

proceedings or has violated adjudication order conditions; and (c) removed the bill's section that amended s. 985.3141, F.S., to make a youth's willful failure to return from temporary release a third degree felony.