

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SBs 1192 & 180

SPONSOR: Criminal Justice Committee and Senators Webster and Lee

SUBJECT: Juvenile Offenders

DATE: March 21, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Mannelli</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The CS/SB's 1192 and 180 amends several sections relating to juvenile justice. What follows are some of the major provisions being amended.

Placement in a Staff-Secure Shelter-- The CS would amend s. 984.225, F.S., to broaden the potential group of adjudicated children in need of services (CINS) youths who are eligible for placement in a staff-secure shelter for up to 90 days. According to the Department of Juvenile Justice (DJJ), these shelters have been underutilized for this purpose.

Placement in a Physically Secure Program-- The CS would amend s. 984.226, F.S., to expand the pilot program in the Seventh Judicial Circuit to be a statewide program for certain CINS youths.

Court Jurisdiction in Juvenile Cases-- The CS amends s. 985.201, F.S., to provide that a court may retain jurisdiction over a youth who has been committed to the DJJ for placement in a juvenile prison or a high-risk or maximum-risk residential program. The court may retain jurisdiction until the youth reaches 22 years of age for the purpose of allowing the youth to participate in a juvenile conditional release (i.e., aftercare) program.

Reports and Affidavits-- The CS would amend s. 985.207, F.S., which outlines the circumstances under which a child may be taken into custody, to expressly authorize law enforcement officers to take into custody a youth who has failed to appear at a court hearing or who is in violation of postcommitment community control.

Under the CS, in those instances where a youth is taken into custody and released pursuant to s. 985.211, F.S., the person taking the youth into custody must make the release report to the juvenile probation officer within 24 hours after the youth's release.

In addition, the arresting law enforcement agency is required to complete and present its investigation to the state attorney's office within eight days of a youth being placed in secure detention.

Detention-- The CS would authorize the court to place a youth charged with committing an act of domestic violence in secure detention even where there is no finding that the offense has resulted in physical injury to the victim.

The bill would also allow the court to use the risk assessment instrument to score both the current offense and the underlying charge for which a youth was placed under the supervision of the DJJ, if while on supervision, the youth is charged with a new offense.

In addition, a youth who is detained on a judicial order for failure to appear could be held in secure detention for up to 72 hours in advance of the youth's next scheduled court hearing, regardless of the scored risk assessment instrument, if the youth has willfully failed to appear (after proper notice) for one adjudicatory hearing or two or more hearings of any nature.

The CS would also extend the current 21-day detention time limit for an additional 9 days if the offense charged is a capital felony, life felony, first degree felony, or second degree felony involving violence against a person.

Punishment for Contempt of Court-- The CS would allow the court to place a delinquent youth in a secure detention facility for a time period not to exceed 5 days for a first contempt finding and not to exceed 15 days for a second or subsequent contempt. A CINS youth found in contempt could be placed in a staff-secure facility for the same time periods.

Process and Service-- The CS would require law enforcement agencies to serve process for juvenile proceedings within seven days after arraignment or as soon as possible afterwards.

Sentencing Alternatives for Juveniles Prosecuted as Adults-- The CS would enumerate several circumstances in which a youth could be found unsuitable for juvenile sanctions, including committing a new violation of law while under juvenile sanctions.

Juvenile Arrest and Monitor Unit Pilot Program-- The CS would authorize the creation of a pilot program in Orange County that would continue through September 30, 2003. The Orange County Sheriff's Office would be required to monitor selected juvenile offenders on community control in Orange County.

The CS substantially amends, creates, or repeals the following sections of the Florida Statutes: 784.075, 984.09, 984.225, 985.201, 985.207, 985.211, 985.213, 985.215, 985.216, 985.219, 985.231, 985.233, and creates an unnumbered section of law.

II. Present Situation:

Battery on Detention or Commitment Facility Staff-- The substantive provisions of s. 784.075, F.S., make it a third degree felony to commit a battery on a juvenile probation officer

or on other detention or commitment facility staff. The “catch line” or introduction to this section, however, does not make reference to juvenile probation officers.

Placement in a Staff-Secure Shelter-- Section 984.225, F.S., allows the court to order that a youth adjudicated as a child in need of services (CINS) be placed for up to 90 days in a staff-secure shelter if:

- ▶ the youth's parent, guardian, or legal custodian refuses to provide food, clothing, shelter, and necessary parental support for the youth and the refusal is a direct result of an established pattern of significant disruptive behavior of the youth in the home of the parent, guardian, or legal custodian; or
- ▶ the youth refuses to remain under the reasonable care and custody of his or her parent, guardian, or legal custodian, as evidenced by repeatedly running away from home. The court may not order that a youth be placed in a staff-secure facility unless:
 - the youth has failed to successfully complete an alternative treatment program or to comply with a court-ordered sanction; and
 - the youth has been placed in a residential program on at least one prior occasion pursuant to a court order under this chapter.

Placement in a Physically Secure Facility-- Section 894.226, F.S., authorizes the court to place a youth who has been adjudicated a child in need of services in a physically secure facility, if the youth has run away from a staff-secure facility or has committed at least two prior acts of direct or indirect contempt. In 1997, the Legislature created this section to require the DJJ to establish a pilot program within a single judicial circuit for the purpose of operating one or more physically secure facilities within existing resources as an alternative to placement in a staff-secure facility. This pilot program (Discovery Center) was established within the Seventh Judicial Circuit, encompassing Flagler, Putnam, St. Johns, and Volusia counties. The program has been underutilized in large part because of the eligibility requirements and the limited geographical area, according to the DJJ. Length of stay in this facility is limited by statute to up to 5 days for a first placement and up to 15 days for subsequent placements.

The youth must be represented by counsel at each court appearance and if the youth is indigent, the court must appoint counsel. However, the court may request reimbursement of attorney's fees and costs from the nonindigent parent. The law further requires that youths receive appropriate assessment, treatment, and educational services that are designed to eliminate or reduce the youth's truant, ungovernable, or runaway behavior. In addition, the youth and family must be provided with family counseling and other support services necessary for reunification.
s. 984.226, F.S.

Section 984.226, F.S., also directs the Juvenile Justice Advisory Board (now called the Juvenile Justice Accountability Board or JJAB) to monitor the operation of the pilot program and to issue a preliminary report to the Legislature by December 1, 1998, and to issue a final report jointly with the DJJ by December 1, 1999. In its final report, the JJAB concluded, in part, the following: continue testing of physically secure placements for certain CINS youths; placements should be

made for a time period not exceeding 90 days along with a judicial review; and the DJJ should be allowed to contract for physically secure space in other appropriate facilities that have available space.

Court Jurisdiction in Juvenile Cases-- Generally, under s. 985.201, F.S., the court retains jurisdiction (unless relinquished by its order) until the youth reaches 19 years of age, with the same power over the youth that the court had prior to the youth becoming an adult. Exceptions to this jurisdiction ending when the youth turns 19 years of age include serious or habitual juvenile offenders and juvenile offenders placed in juvenile correctional facilities or juvenile prisons. In these instances, the court's jurisdiction extends until the juvenile offenders reach the age of 21.

Reports and Affidavits-- Currently, a youth taken into custody for a violation of law must be released as soon as reasonably possible unless there is a need to hold the youth and a court issues an order to detain the youth pursuant to s. 985.215, F.S. Section 985.211, F.S., requires that if a youth is released, the person taking the youth into custody must make a written report or probable cause affidavit to the juvenile probation officer within three days.

The report must contain the facts and reasons for taking the youth into custody. In addition, the release report must identify the youth, the parents, guardian, or legal custodian and the person to whom the youth was released, and contain sufficient information to establish the jurisdiction of the court and make a prima facie showing that the youth has committed a violation of law or a delinquent act.

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

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

In those instances where a youth 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 youth was taken into custody within 24 hours. In those instances where the youth 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 one week after the youth has been released from custody, or within one week after the release report has been made.

Detention-- Section 985.215, F.S., provides criteria for determining whether a youth taken into custody can be held in detention. To be detained, a youth must meet the statutory criteria, as well as reach a certain score on the risk assessment instrument, which is completed by a juvenile probation officer. If a youth scores as a high risk to public safety, he or she may be placed in

secure detention. If he or she scores as a low risk, he or she may be placed in nonsecure or home detention, or he or she may be released.

The risk assessment instrument was developed by the DJJ in conjunction with the Conference of Circuit Judges of Florida, the Prosecuting Attorneys Association, and the Public Defenders Association. By law, it was designed to target a narrower population of children than what is provided under the statutory criteria. The parties involved in developing it are required to evaluate and revise it as necessary.

The following youths are eligible to be held in detention under the statutory criteria:

- ▶ A youth alleged to be an escapee or absconder from commitment or community control;
- ▶ A youth wanted in another jurisdiction for a felony offense;
- ▶ A youth requesting to be detained for his protection;
- ▶ A youth charged with committing domestic violence;
- ▶ A youth charged with a capital felony, a life felony, a first degree felony, a second degree felony that does not involve a drug violation, or a violent third degree felony, including any such offense involving the use or possession of a firearm;
- ▶ The youth is charged with a second or third degree felony drug offense or a non-violent third degree felony *and* the youth meets one of five additional “qualifiers” (has a record of failing to appear, has a record of prior violations, has been released pending commitment placement, has a record of violence, or is found to possess a firearm); or
- ▶ A youth is alleged to have violated the conditions of community control or aftercare supervision.

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

Following an entry of an adjudication order, the youth may remain in detention for up to 15 additional days, unless the court grants a continuance for cause upon motion of the youth or state. The 21-day and 15-day time limits do not include periods of delay resulting from a continuance granted for cause. If a continuance is granted, the court must hold a hearing every 72 hours to determine the need for further detention and further continuance of the proceedings. After the disposition hearing (sentencing), a youth may be detained for varying time periods pending placement in a residential commitment program.

Under s. 985.213, F.S., a youth who is charged with domestic violence and does not meet detention criteria (i.e., a domestic violence misdemeanor) can be held in secure detention if the court makes the following specific written findings:

- ▶ the domestic violence offense caused physical injury to the victim;
- ▶ respite care for the youth is not available; and
- ▶ it is necessary for the youth to be in secure detention to protect the victim from further injury.

A youth held in secure detention under this provision may not be held for more than 48 hours unless ordered by the court. After 48 hours, the court must hold a hearing if the state attorney or victim requests that secure detention be continued. The youth may continue to be held in secure detention if the court makes a specific, written finding that secure detention is necessary to protect the victim from further injury. The youth may be securely detained up to the time limits set forth in s. 985.215, F.S.

Punishment for Contempt of Court-- Under s. 985.216, F.S., a delinquent youth who has been held in direct or indirect contempt of court may be placed in a secure detention facility for five days for a first offense or 15 days for a second or subsequent offense. A CINS youth found in contempt of court may be held in a staff-secure facility for the same time periods.

Process and Service-- Currently s. 985.219, F.S., does not specify time frames within which law enforcement agencies are required to serve process for juvenile proceedings.

Disposition in Delinquency Cases-- Section 985.231, F.S., prescribes the court's power of disposition in juvenile cases. In addition to being able to order a youth who has been adjudicated delinquent into a commitment program, the court is also authorized to place such a youth in a community control program or a postcommitment community control program under the supervision of the department or any other person or agency specifically authorized and appointed by the court.

Sentencing Alternatives for Juveniles Prosecuted as Adults-- Section 985.233, F.S., describes the procedures for the disposition or sentencing of youths who have been prosecuted as adults. Upon a plea of guilty or a finding of guilt of a youth prosecuted as an adult, the court may: (1) stay and withhold the adjudication of guilt, adjudicate the youth delinquent, and impose juvenile sanctions; (2) impose an adjudication of guilt, classify the youth as a youthful offender, and impose any lawful sentence if the youth proves unsuitable for juvenile sanctions; or (3) impose adult sanctions. This section does not describe what circumstances equate to making a youth unsuitable for juvenile sanctions.

III. Effect of Proposed Changes:

The CS/SB's 1192 and 180 amends several sections relating to juvenile justice. What follows are the specific areas of law being amended.

Battery on Detention or Commitment Facility Staff-- The CS would amend the “catch line” of s. 784.075, F.S., to include juvenile probation officers so that it will be consistent with the substantive provisions of this section making it a third degree felony to commit battery on detention or commitment facility staff or juvenile probation officers (technical).

Placement in a Staff-Secure Shelter-- The CS would amend s. 984.225, F.S., to broaden the potential group of adjudicated CINS youths who are eligible for placement in a staff-secure shelter for up to 90 days. According to the DJJ, these shelters have been underutilized for this purpose. The current criteria would no longer require that the youth has failed to successfully complete an alternative treatment program or to comply with a court-ordered sanction *and* that the youth has been placed in a residential program on at least one prior occasion pursuant to a court order. Instead, the bill would only require that one of these criteria be met before a CINS youth could be placed in a shelter under this section. (The other two existing statutory criteria discussed in the present situation would remain unchanged.)

Placement in a Physically Secure Facility-- The CS would amend s. 984.226, F.S., to expand the pilot program in the Seventh Judicial Circuit to be a statewide program. The CS would also allow the court to place an adjudicated CINS youth in a physically secure setting if the youth has failed to appear for placement in a staff-secure shelter or failed to comply with a valid court order and has been found to be in direct or indirect contempt of court or run away from a staff-secure shelter following such placement. (A technical conforming amendment is made in s. 984.09, F.S., to change “facility” to “setting.”)The CS would also expressly provide that a youth must be represented by counsel unless the record affirmatively demonstrates by clear and convincing evidence that the youth knowingly and intelligently waived the right to counsel after being fully advised by the court.

Furthermore, the youth could be placed in a physically secure setting for up to 90 days, with an additional 30-day extension if the court found that reunification with the family could be achieved within that extension period. If the youth required mental health treatment or residential care for a developmental disability, or if the DJJ found inadequate support from the parents, the court would direct that the youth be transferred to the Department of Children and Family Services. The CS would also delete the requirement that the JJAB monitor the pilot program and submit a report by December, 1999.

Court Jurisdiction in Juvenile Cases-- The CS would amend s. 985.201, F.S., to provide that a court may retain jurisdiction over a youth who has been committed to the DJJ for placement in a high-risk or maximum-risk residential program or juvenile prison. The court may retain jurisdiction until the youth reaches 22 years of age for the purpose of allowing the youth to participate in a juvenile conditional release (i.e., aftercare) program pursuant to s. 985.316, F.S. If the youth is not successful in the conditional release program, the DJJ may use the transfer procedures specified in s. 985.404, F.S., to transfer the youth back to a commitment program.

Section 985.201, F.S., would also be amended such that the court could retain jurisdiction over youths in a residential commitment program, in a juvenile prison, or in a residential sex offender program until the youth reaches 21 years of age so that the youth could complete the program.

Reports and Affidavits-- The CS would amend s. 985.207, F.S., which outlines the circumstances under which a youth may be taken into custody, to expressly allow law enforcement to take into custody a youth who has failed to appear at a court hearing or who is in violation of community control or postcommitment community control.

Under the CS, in those instances where a youth is taken into custody and released pursuant to s. 985.211, F.S., the person taking the youth into custody must make the release report to the juvenile probation officer within 24 hours after the youth's release. Regardless of whether a youth is released from custody or detained, the CS 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.

In addition, the arresting law enforcement agency is required to complete and present its investigation to the state attorney's office within eight days of a youth being placed in secure detention. Included in the presentation would be police reports, witness statements, and evidence collection documents.

Detention-- The CS would authorize the court to place a youth charged with committing an act of domestic violence in secure detention even where there is no finding that the offense has resulted in physical injury to the victim. However, the court would still be required to make written findings that respite care for the youth is not available and that it is necessary to place the youth in secure detention in order to protect the victim from injury. Currently, s. 985.213, F.S., addresses the court's ability to continue to hold the youth in secure detention beyond an initial period of 48 hours, whereas the CS would expand the court's ability to continue to hold the youth in detention care, whether it be secure, nonsecure, or home detention.

The CS would also allow the court to use the risk assessment instrument to score both the current offense and the underlying charge for which a youth was placed under the supervision of the DJJ, if while on supervision, the youth is charged with a new offense. This provision should ensure that the court's decision to place a youth in detention care for a current offense include consideration of whether that youth is currently on community control, home detention, nonsecure detention, aftercare, postcommitment community control, or commitment status with the DJJ. Thus, an offender who commits a new offense while under the DJJ supervision should score out higher on the risk assessment instrument than an offender who commits the same offense but is not under supervision.

The CS would also expand the group who is required to evaluate and revise the risk assessment instrument to include representatives from the Florida Sheriff's Association and the Florida Association of Chiefs of Police. (Currently, the DJJ, in conjunction with the Conference of Circuit Judges of Florida, the Prosecuting Attorneys Association, and the Public Defenders Association perform this task.)

In addition, a youth who is detained on a judicial order for failure to appear could be held in secure detention for up to 72 hours in advance of the youth's next scheduled court hearing, regardless of the scored risk assessment instrument, if the youth has willfully failed to appear (after proper notice) for an adjudicatory hearing on the same case or two or more hearings of any nature.

The CS would also extend, if additional time is needed to prepare the case, the current 21-day detention time limit for an additional 9 days if the offense charged is a capital felony, life felony, first degree felony, or second degree felony involving violence against a person.

Finally, the CS would delete an obsolete reference in this section to juvenile assignment centers.

Punishment for Contempt of Court-- The CS would allow the court to place a delinquent youth in a secure detention facility for a time period not to exceed 5 days for a first contempt finding and not to exceed 15 days for a second or subsequent contempt. A CINS youth found in contempt could be placed in a staff-secure facility for the same time periods. (Currently, the court is required to place such youths in these facilities for exactly five days and 15 days.)

Process and Service-- The CS would require law enforcement agencies to serve process for juvenile proceedings within seven days after arraignment or as soon as possible afterwards, but not including Sundays under s. 985.219, F.S. (There are currently no specified time frames.)

Disposition in Delinquency Cases-- The CS would provide a technical amendment to s. 985.231, F.S., to incorporate a change made in s. 985.201, F.S., relating to the court's jurisdiction.

Sentencing Alternatives for Juveniles Prosecuted as Adults-- The CS would enumerate several circumstances in which a youth could be found unsuitable for juvenile sanctions, including the following: committing a new violation of law while under juvenile sanctions; committing any other violation of the conditions of juvenile sanctions; or the court determines that the youth's actions otherwise demonstrate a failure of juvenile sanctions.

If the youth proves unsuitable for juvenile sanctions under the CS, the DJJ is required to provide the sentencing court with a written report outlining the basis for its objections. The DJJ must also provide a copy of the report to the state attorney and to the defense counsel, and schedule a hearing within 30 days.

Juvenile Arrest and Monitor Unit Pilot Program-- The CS would authorize the creation of a pilot program in Orange County that would continue through September 30, 2003. The Orange County Sheriff's Office would be required to monitor selected juvenile offenders on community control in Orange County. The DJJ would recommend, on a monthly basis, which juvenile offenders should be supervised under this program from a pool of eligible juveniles on community control, post-commitment community control, and aftercare in Orange County. (The DJJ would also be required to maintain the files on the juveniles supervised under this program.) The sheriff's office would have the discretion to decide whether to accept or reject these recommended juveniles. The CS would only allow the Juvenile Arrest and Monitor Unit to supervise up to 25 juveniles per deputy assigned to the unit. The Orange County Sheriff's Office would also be required to use some of the money appropriated to it to contract with the University of Central Florida to conduct a study to determine the effectiveness of the pilot program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There are six provisions of CS/SB 1192 & 180 that have fiscal implications:

1. The CS expands the circumstances for which a child in need of services may be placed in a staff-secure shelter by authorizing placement for failure to comply with a court order. This will allow for maximum utilization of the funds that have already been appropriated for CINS/FINS shelters.

The CS also expands the operation of the physically secure shelter from a pilot to a statewide program and authorizes an increase in the length of stay from 5 to 90 days. There is \$1.2 million currently appropriated to the Department of Juvenile Justice for the operation of a physically secure shelter, and since placement of a child is contingent upon the availability of a bed, there should be no additional fiscal impact over the amount currently appropriated.

2. The CS allows the court to retain jurisdiction over a youth until his or her 21st birthday in order to participate in aftercare or conditional release programs. The DJJ anticipates that this provision will affect an average of 146 youths annually. At an average cost of \$15 per youth served per day, the maximum annual fiscal impact is expected to be \$799,350 which will be absorbed within current resources.

3. The CS authorizes the holding of youth in detention care for failure to appear for up to 72 hours in advance of the youth's next scheduled court appearance and relaxes the requirements for detaining a youth charged with a domestic violence offense who does not otherwise score secure detention.

There are over 300 secure detention beds which have been authorized for construction, but which are not yet on-line, and these beds should be sufficient to offset any increase generated by these provisions. The appropriations bill by the Budget Committee proposes approximately \$3.0 million to operate additional secure detention beds in FY 2000-01.

To the extent that holding these youth in secure detention reduces court costs from the rescheduling of proceedings and multiple witness appearances, there should be a positive fiscal impact on the judicial system. Additionally, data from DJJ indicate that 25 percent of youth who were the subject of pick up orders committed a new crime prior to the pick up order being served, which this provision should lessen.

4. The CS allows the court to extend the stay of a juvenile in detention for an additional 9 days of detention, upon a showing of good cause, in the most serious felony cases. The Budget Committee's proposed appropriations bill includes \$4.3 million to construct the additional capacity necessary to handle the projected population increase from this provision.
5. The CS gives the courts discretion to impose secure detention sanctions for punishment of contempt of court for periods of time not to exceed the durations specified under current law. To the extent that this provision of the CS results in courts imposing contempt sanctions of shorter duration, there may be a cost-savings.
6. The CS authorizes the creation of a Juvenile Arrest and Monitoring Unit pilot program in Orange County. There is \$500,000 in recurring General Revenue in the Budget Committee's proposed FY 2000-01 Appropriations Bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
