

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/SB 1634

SPONSOR: Criminal Justice Committee and Senator Webster

SUBJECT: Juvenile Detention

DATE: March 30, 1999 REVISED: _____

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

I. Summary:

The CS eliminates the pre-requisite that a victim of domestic violence sustain actual physical injury before allowing a judge to detain a youth for committing domestic violence. In addition, the CS expands the options available for detaining a youth charged with committing domestic violence.

The CS also authorizes the court to continue the detention of a youth up to 5 additional days if the youth is detained on an order for a failure to appear and has at least two prior failures to appear on the same case.

Furthermore, under the CS, if the underlying offense qualifies a youth for detention, and the youth is alleged to have committed a violation of community control, the youth may be detained for the violation of community control. If the youth qualifies for secure detention, he or she may be detained in a consequence unit in lieu of detention. When the underlying offense does not qualify the youth for detention, he or she may be detained in a consequence unit for alleged violations of community control or aftercare subject to prescribed time limitations. If a consequence unit is not available, the CS provides as follows:

- ▶ For a first violation of community control, a youth will be placed on home detention with electronic monitoring.
- ▶ For a second violation of community control, a youth may be detained for 48 hours and then placed on home detention with electronic monitoring.
- ▶ For a third or subsequent violation of community control, a youth may be detained for 5 days and then placed on home detention with electronic monitoring.

This CS substantially amends sections 985.213 and 985.215 and reenacts sections 985.03, 790.22, 985.208, 985.211, 985.219, 985.228, and 985.231 of the Florida Statutes.

II. Present Situation:

Detention

Section 985.215, F.S.(Supp. 1998), 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 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 section 985.213, F.S. (Supp. 1998), 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 (Supp. 1998).

Community Control Violations

Under 985.207(d), F.S. (Supp. 1998), a law enforcement officer who has probable cause to believe that a youth is in violation of community control or aftercare supervision may take the youth into custody. If the violation involves a new charge of delinquency which qualifies the youth for detention, the youth may be detained in a facility other than a consequence unit. If the youth is not eligible for detention for the new charge of delinquency, he or she may be held in the consequence unit pending a hearing and is subject to the time limitations specified in s. 985.215, F.S. (Supp.1998). If a consequence unit is not available, the youth must be placed on home detention with electronic monitoring. Currently, there is only one consequence unit in operation in the state.

A consequence unit is defined as a secure facility specifically designated by the Department of Juvenile Justice (DJJ) for youths who are taken into custody for violating community control or aftercare, or who have been found by the court to have violated the conditions of community control or aftercare. s. 985.231(1)(a)1.c., F.S.(Supp. 1998).

In the recent case of *N.E.W. v. Portesy*, 23 FLW D1428 (2nd DCA, 1998), the Second District Court of Appeal reviewed a case involving two juveniles who were on community control for felony offenses. These two juveniles committed misdemeanor offenses while on community control. When based exclusively on the new misdemeanor arrests, neither juvenile qualified for detention. However, pursuant to a policy of the DJJ at the time, the underlying felony offenses were scored in the risk assessment instrument and on that basis both juveniles were determined eligible for detention. On review, the court held that the underlying offense for which a juvenile is on community control may not be scored as a “primary” offense. Under that interpretation, there can be cases where a juvenile offender who is on community control for a serious offense is picked up for a violation of community control but will not qualify for detention.

III. Effect of Proposed Changes:

Detention

The CS would eliminate the pre-requisite that a victim of domestic violence sustain actual physical injury before allowing a judge to detain a youth for committing domestic violence. In addition, the CS would expand the options available for detaining youths charged with domestic violence to include nonsecure or home detention. In the context of domestic violence cases where detention of the youth is needed to protect the victim from further injury, the use of home detention will not be available to the judge.

Under the CS, the court would be authorized to continue the detention of a youth up to 5 additional days if the youth is detained on an order for a failure to appear and has at least two prior failures to appear on the same case. The CS would also provide that failure to notify the clerk or defense counsel of the youth's current address is not grounds to excuse a nonappearance.

The CS would also add a provision which clarifies that regardless of the decision of the juvenile probation officer at intake concerning detention, youths who are brought in on a pick-up order issued by a judge must be detained until the detention hearing is conducted. (This essentially codifies current practice of the department.)

Community Control Violations

Under the CS, if the underlying offense qualifies the youth for detention and the youth is alleged to have committed a violation of community control, the youth could be detained for the community control violation. If the youth qualifies for secure detention, he or she could be detained in a consequence unit in lieu of detention.

In cases where the underlying offense does not qualify the youth for detention, the youth could be detained in a consequence unit for alleged violations of community control or aftercare as currently provided in s. 985.231(1)(a)1.c., F.S (Supp. 1998). If a consequence unit is not available, the CS would provide as follows:

- ▶ For a first violation of community control, a youth would be placed on home detention with electronic monitoring.
- ▶ For a second violation of community control, a youth could be detained for 48 hours and then placed on home detention with electronic monitoring.
- ▶ For a third or subsequent violation of community control, a youth could be detained for 5 days and then placed on home detention with electronic monitoring.

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:

According to the Department of Juvenile Justice, the portion of the CS regarding domestic violence and pick-up orders would have no impact on the department.

The DJJ points out that currently there is no tracking system in place to determine the exact number of juveniles who are alleged to have violated the conditions of community control and aftercare supervision on two or more occasions, and youth who have missed two or more hearings on the same case. However, data indicated that 8,369 youths were referred for a violation of community control and/or aftercare in FY 1997-98. The department projects that the **non-recurring costs for the CS's community control provisions** would be **\$5,030,100 (69 new beds)** and the **recurring costs** would be **\$2,360,058 per year, for a total cost of \$7,390,158.**

The DJJ states that the exact number of juveniles who missed two consecutive hearings on the same case cannot be determined. However, in FY 1997-98, there were 95,993 cases handled judicially, according to the DJJ. The department estimates that if 5 percent of these youths did not appear on two separate occasions, the CS would affect about 4,800 youths. The department projects that the **non-recurring costs for the failure to appear provision** would be **\$4,811,400 (66 beds)** and the **recurring costs** would be **\$2,256,000, for a total cost of \$7,067,400.**

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.
