

**STORAGE NAME:** h1769b.cp

**DATE:** March 31, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
CRIME AND PUNISHMENT  
ANALYSIS**

**BILL #:** HB 1769 (PCB JJ 99-01)

**RELATING TO:** Juveniles/Prosecution as Adults

**SPONSOR(S):** Committee on Juvenile Justice

**COMPANION BILL(S):** SB 130

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) JUVENILE JUSTICE YEAS 9 NAYS 2
- (2) CRIME AND PUNISHMENT YEAS 5 NAYS 0
- (3) CORRECTIONS
- (4) CRIMINAL JUSTICE APPROPRIATIONS
- (5)

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I. SUMMARY:

The bill provides state attorneys with the discretion to charge juveniles 14 or 15 years of age as an adult for a grand theft of a motor vehicle if the juvenile has been previously adjudicated of a grand theft of a motor vehicle.

In order to transfer a juvenile 14 to 15 years of age to adult court on a charge of auto theft under current law, the state attorney would need to utilize a waiver hearing procedure.

For juveniles transferred to adult court, who are found to have committed the offense, the adult court judge would have the discretion to impose either adult or juvenile sanctions.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Transfer Provisions**

Current Florida law has provisions governing the transfer of juveniles for prosecution in adult court that can be broken down into two major categories: *mandatory* transfer provisions, and *discretionary* transfer provisions. Mandatory transfer provisions **require** the state attorney to prosecute certain juvenile offenders in adult court. Discretionary transfer provisions **authorize** the state attorney to prosecute certain juvenile offenders in adult court as a matter of discretion. [s. 985.226, F.S. & s. 985.227, F.S.] This bill amends a discretionary transfer provision.

Presently there are two types of discretionary transfer provisions. First, the state attorney has the discretion to file a motion requesting the court to transfer a juvenile offender, 14 years-of-age or older, for prosecution as an adult for **any** violation of law. [s. 985.226(2), F.S.]. This type of transfer procedure is called a *waiver hearing*. In a waiver hearing, the judge determines whether sufficient facts exist to warrant transferring the juvenile for prosecution as an adult.

In order to transfer a juvenile 14 to 15 years of age to adult court on a charge of auto theft under existing law, the state attorney would need to utilize the waiver hearing procedure described above.

The second type of discretionary transfer provision is *direct filing*. If in the state attorney's judgement and discretion the public interest requires that adult sanctions be considered or imposed, the state attorney may file an information (a formal charging document) on a juvenile offender 14 or 15 years of age who is charged with one of the following offenses:

- arson
- sexual battery
- robbery
- kidnaping
- aggravated child abuse
- aggravated assault
- aggravated stalking
- murder
- manslaughter
- throwing, placing or discharging a destructive device or bomb
- armed burglary in violation of s. 810.02(2)(b)
- burglary of a dwelling in violation of s. 810.01(2)(c)
- aggravated battery
- lewd or lascivious assault or act in the presence of a child
- carrying, displaying, using, threatening or attempting to use a weapon or firearm during the commission of a felony, or
- grand theft in violation of s. 812.014(2)(a). [s. 985.227(1)(a)].

The state attorney also has the discretion to file an information on a juvenile offender who is 16 or 17 years of age for any felony offense. In addition, if the juvenile offender has two previous adjudications or adjudications withheld for delinquent acts, at least one of which was a felony, the state attorney may direct file the juvenile offender to adult court for a misdemeanor offense. [s. 985.227(1)(b), F.S.].

**Motor Vehicle Theft**

Grand theft of a motor vehicle is a third degree felony if the value of the vehicle is under \$20,000. The offense is a second-degree felony, if the value of the motor vehicle is \$20,000 or more, but less than \$100,000. [s. 812.014, F.S.].

B. EFFECT OF PROPOSED CHANGES:

The bill provides state attorneys with the discretion to charge juveniles 14 or 15 years of age as an adult for a grand theft of a motor vehicle if the juvenile has been previously adjudicated of a grand theft of a motor vehicle. A juvenile whose prior record contains only one withhold of adjudication for a theft of a motor vehicle would not qualify to be charged as an adult under this provision. Nonviolent first offenders often receive a withhold of adjudication instead of being adjudicated guilty of a criminal offense.

For juveniles transferred to adult court under these provisions, adult sanctions are not guaranteed to be imposed by the adult court judge. The adult court judge upon a finding of guilt could still adjudicate the juvenile delinquent and impose juvenile sanctions. The judge will use his or her discretion to make that determination. However, once a juvenile has adult sanctions imposed upon him or her, the juvenile must be subsequently prosecuted as an adult for future criminal offenses.

Adult sanctions for grand theft of a motor vehicle, by an offender without any prior record range from a non-state prison sanction, to a maximum of five years imprisonment for a third degree felony, and fifteen years imprisonment for a second degree felony. [See, s.921.0022, F.S.; 921.0024, F.S.].

As an alternative adult sanction, an adult court judge may sentence a juvenile charged with grand theft of a motor vehicle as a youthful offender. [s. 958.04]. As a youthful offender a court may either adjudicate the offender guilty or withhold adjudication of guilt. The total length of time a youthful offender sentence may last is six years (unless the offense is a third degree felony in which case the sentence can be for no more than five years).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 985.227, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides state attorneys with discretion to direct file 14 and 15 year olds for a second grand theft of a motor vehicle.

Section 2. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects:</u>	FY 99-00	FY 00-01	FY 01-02
Department of Corrections	\$1,451,083	\$1,052,907	\$474,950
2. <u>Recurring Effects:</u>	FY 99-00	FY 00-01	FY 01-02
Department of Corrections	\$356,268	\$1,304,209	\$2,342,758
3. <u>Long Run Effects Other Than Normal Growth:</u>			
See Fiscal Comments.			
4. <u>Total Revenues and Expenditures:</u>			
Department of Corrections	FY 99-00 through FY 2003-04		
Total Annual Operating Cost		\$10,431,658	
Total Annual Fixed Capital Outlay		\$ 3,529,289	

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:  
N/A
2. Recurring Effects:  
N/A
3. Long Run Effects Other Than Normal Growth:  
N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:  
N/A
2. Direct Private Sector Benefits:  
N/A
3. Effects on Competition, Private Enterprise and Employment Markets:  
N/A

D. FISCAL COMMENTS:

The fiscal estimates reflected in this analysis are based on the Criminal Justice Estimating Conference analysis of the identical senate bill (SB 130). The fiscal impact calculated for the Department of Corrections is based on an anticipated need of 164 additional prison beds over the next five fiscal years.

Data used by the impact conference were obtained from the Department of Juvenile Justice, the Department of Corrections inmate and probation admissions files, and the sentencing guidelines

database. During FY 1996-97, of the 14- and 15-year-olds convicted of auto theft, 2,764 were not transferred to adult court, which would be the population subject to a discretionary transfer if this bill were to pass. Committee staff notes, however, that these 2,764 juveniles, which form the basis for the fiscal estimate, do not reflect a group of individuals who could only be transferred to adult court for auto theft under the provisions of this bill. Rather, the same number of juveniles are currently subject to transfer to adult court through the use of the waiver hearing process that is available under current law. [s. 985.226, F.S.]. Because this bill amends **one** of two current discretionary transfer mechanisms, there is no way to predict the extent to which the bill's amendment to the discretionary direct filing criteria provided in s. 985.226, F.S., will increase the number of juveniles transferred to adult court on the charge of auto theft.

The Department of Juvenile Justice has indicated in the analysis of the identical senate bill (SB 130), that the provisions of this bill would have no fiscal impact on them. However, if one assumes that the Department of Corrections would require 164 additional prison beds over the next five years, the conclusion can logically be drawn that if those youth occupying those 164 beds had not been transferred to adult court, they probably would have been ordered by a juvenile court judge into a commitment program of the Department of Juvenile Justice. If one also assumes that those youth would have been placed in at least a "moderate risk" commitment program, at an average cost per juvenile of \$75 per day, there is a cost "savings" associated with those youth "freeing up" commitment program bed space. The "savings" however, are not quantifiable within the Department of Juvenile Justice due to the number of youth currently on the waiting list of youth ordered to enter commitment programs within the Department of Juvenile Justice. The result, therefore, is a reduction in the waiting list to enter Department of Juvenile Justice commitment programs, rather than a reduction in quantifiable costs.

Based on the bill and the amendment requiring a prior adjudication for grand theft of a motor vehicle before a state attorney has the discretion to direct file on a subsequent charge of grand theft of a motor vehicle, the Criminal Justice Impact Conference projects that an additional 43 prison beds will be needed by FY 2003-2004. The total annual operating cost in that year would be less than \$1.0 million and the cost of constructing the necessary prison beds would be approximately \$900,000.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Juvenile Justice adopted an amendment which requires that a juvenile 14 or 15 years of age must have a prior adjudication for grand theft of a motor vehicle before a state attorney may direct file a charge of grand theft of a motor vehicle. The amendment passed by the Committee on Juvenile Justice was enrolled into the proposed committee bill, and the amendment is identical to an amendment passed by the Senate Criminal Justice Committee to the companion bill.

On March 30, 1999, the Committee on Crime and Punishment adopted an amendment requiring that the annual report ranking juvenile commitment programs that the Department of Juvenile Justice must submit to the legislature consider at least the following factors:

1. The recidivism rate, measured by whether a juvenile has been arrested while committed or within 18 months after leaving a commitment program, regardless of whether the commitment program was successfully completed.
2. The seriousness of the criminal history of the juveniles in the program.
3. The program's cost per client.
4. The average age of the juveniles in the program.

**Determining Recidivism** The tendency of a criminal offender to repeat criminal behavior is known as *recidivism*. Recidivism is the single most important factor in measuring the success or failure of criminal justice, juvenile justice and crime prevention programs. Currently, however, there is no statutory definition of recidivism by which juvenile justice programs are evaluated.

In 1998, for purposes of evaluating program effectiveness, the JJAB, the DJJ, and other stakeholders, agreed to define recidivism as adjudication as a juvenile or as an adult for an offense committed within one year of release from a DJJ commitment program. Up until this time overall recidivism was defined as recommitment to the DJJ or placement on probation or in a Department of Corrections facility. (1998 Annual Report and Juvenile Justice Fact Book).

In the 1998 Annual Report and Juvenile Justice Fact Book, the JJAB explains the rationale for the definition as follows: "this method gives a more valid picture of whether the program successful in changing the **actual behavior** of the individual" (emphasis added).

In its Recidivism Report For Commitment Programs (FY 1996-97), the DJJ made a similar rationalization for its emphasis on measuring recidivism from the point of adjudication ( or adjudications withheld):

Subsequent referrals or arrests indicate that a youth has been charged with another offense, but a subsequent referrals/arrests were not necessarily evidence that the released youth committed the offense charged. . . . An adjudication (including adjudications withheld) or a conviction provides a more solid measure of subsequent criminal involvement. Such a finding by a court is a clearer indication that the youth was found to have committed the offense.

The fact remains, however, that the use of actual adjudications (or adjudications withheld) imposed as a gauge to measure recidivism is imprecise, particularly when one is measuring a *rate of recidivism*, rather than *individual recidivism*. Legal fictions aside, the fact that there is not a sentence imposed in a given case, does not mean the offender did not commit the crime. There are a number of reasons why a juvenile who actually committed a crime and was arrested for it, would, nevertheless, not be sentenced for it. A case could have been dropped as part of a plea negotiation in another case, or sometimes a case is not prosecuted, or a case is dismissed. In any event, a case can result in having neither an adjudication, nor an adjudication withheld, for reasons which have nothing to do with the fact the offender actually repeated his criminal behavior. Counting only those cases which result in an actual sentence (regardless of the status of adjudication) yields recidivist data which



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may be artificially low, and may count as "successes" those individuals who, in fact, are still committing crimes. In fact, any measure of recidivism is likely to underestimate the true rate of recidivism because many criminal acts are either not reported, or if reported, the act may not result in an arrest.

VII. SIGNATURES:

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