

**STORAGE NAME:** h2037.jj

**DATE:** March 26, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
JUVENILE JUSTICE  
ANALYSIS**

**BILL #:** HB 2037 (PCB JJ 99-02)

**RELATING TO:** Juvenile Detention

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

**COMPANION BILL(S):** S 1634

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

(1) JUVENILE JUSTICE YEAS 12 NAYS 0

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**I. SUMMARY:**

HB 2037 addresses three areas of juvenile detention: cases involving domestic violence, violations of community control or aftercare, and failure to appear in court. For acts of domestic violence committed by juveniles, the current law requires the victim to sustain a physical injury before the court is authorized to securely detain an offender under s. 985.213(2), F.S. However, there are incidents where the risk to the victim for future injury is very high, notwithstanding the fact that the victim was not injured during the offense. HB 2037 eliminates the pre-requisite that a victim of domestic violence sustain actual physical injury before allowing a judge detain a child under this section. In addition, the bill expands the options available for detention.

With regard to violations of community control and aftercare, the bill addresses the current inability to detain a juvenile on community control who commits violations of supervision which do not amount to a new law violation. Under the pcb, if the underlying offense qualifies the youth for detention, and the youth is alleged to have committed a violation of community control, the child may be detained for the violation of community control. If the youth qualifies for secure detention under this provision, the youth may be detained in a consequence unit in lieu of detention.

In cases where the underlying offense does not qualify the child for detention, the child may be detained in a consequence unit for alleged violations of community control or aftercare subject to the time limitations provided in s. 985.231(1)(a)1.c., F.S. If a consequence unit is not available, the pcb provides as follows:

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

With regard to failures to appear in court, the pcb authorizes the court to continue the detention of a child up to 5 additional days if the child is detained on an order for a failure to appear and has at least two prior failures to appear on the same case.

The Department of Juvenile Justice's estimate of the fiscal impact of this bill has a **very significant** caveat.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Types of Detention**

Current law identifies three types of detention care. Section 985.03 (18) provides:

(18) "Detention care" means the temporary care of a child in secure, nonsecure, or home detention, pending a court adjudication or disposition or execution of a court order. There are three types of detention care, as follows:

(a) "Secure detention" means temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.

(b) "Nonsecure detention" means temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement.

(c) "Home detention" means temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice staff pending adjudication, disposition, or placement.

**The Initial Stage of Detention**

Generally speaking, a juvenile who is taken into custody and detained must be given a detention hearing within 24 hours. The purpose of the hearing is to determine whether there is probable cause to believe the child committed the offense charged, and whether there is a continued need for detention. [s. 985.215 (2)(g)].

**Determining Detention Need**

Section 985.213(2)(a), F.S., requires that all determinations and court orders regarding placement of a child into detention care must comply with all statutory requirements and be based on a risk assessment of the child. The only exception to these requirements are cases involving acts of domestic violence which are subject to alternative detention provisions.

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, the risk assessment instrument was designed to target a more narrow population of juveniles than what is provided under s. 985.215(2). [s. 985.213(2)(b)1.]

Under section 985.215 (2), a child taken into custody and placed into nonsecure or home detention care or detained in secure detention care prior to a detention hearing may continue to be detained by order of the court, for a period not to exceed the maximum time limits allowed under s. 985.215, if any of the following circumstances apply:

(1) The child is alleged to be an escapee or an absconder from a juvenile justice program.

(2) The child is wanted in another jurisdiction for a felony offense.

(3) The child is charged with a violation of law and requests protection from an imminent threat of physical harm.

(4) The child is charged with a domestic violence offense.

(5) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that **does not** involve a drug offense, or a felony of the third degree that is a violent crime, including an offense involving a firearm.

(6) The child is charged with any second degree or third degree felony that **does** involve a drug offense or any nonviolent third degree felony, **and** the child:

1. Has a record of failure to appear at court hearings;
2. Has a record of law violations;
3. Has already been detained or has been released and is awaiting final disposition of the case;
4. Has a record of violent conduct resulting in physical injury to others; or
5. Was found in possession of a firearm.

(7) The child is alleged to have violated the conditions of community control or aftercare supervision. (Discussed later).

If the court orders a juvenile into a detention placement which is more restrictive than indicated by the risk assessment instrument, the court is required to provide, in writing, clear and convincing reasons for such placement. [s. 985.215(2)] However, while the court may detain a child at a placement more restrictive than indicated by the risk assessment instrument, the court is not authorized to order secure detention for those juveniles falling outside the statutory criteria.

#### **Detention Criteria For Domestic Violence**

Section 741.28(1) defines "Domestic Violence" as:

. . . any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

Under section 985.213, F.S. (2)(b)3, a child charged with committing an offense of domestic violence who does not otherwise meet detention criteria based on the risk assessment instrument may be held in secure detention if the court makes specific written findings that:

1. The offense of domestic violence caused physical injury to the victim;
2. Respite care for the child is not available; and
3. It is necessary to place the child in secure detention in order to protect the victim from further injury.

A child 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 child 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 child may be securely detained up to the time limits set forth in s. 985.215, F.S. (Discussed below).

Under this provision, a physical injury to the victim is required for detention. However, there are incidents where the risk to the victim for future injury is very high, notwithstanding the fact that the victim was not injured during the offense. For example, there can be instances where the offense consisted of choking, slapping, punching or kicking which did not result in physical injury to the victim, yet detention of the juvenile is warranted. Further, some offenses listed within the definition of "domestic violence," such as aggravated assault with a firearm or aggravated stalking, do not require an element of actual injury.

#### **Detention Time Limits**

Under current law, the maximum period of time a juvenile may be held in secure, nonsecure or home detention is 21 days unless an adjudicatory hearing for the youth has been commenced by the court. Following an order of adjudication, a youth may be detained up to 15 days.

### **Violations of Community Control**

Under 985.207(d), F.S., a law enforcement officer who has probable cause to believe that a child is in violation of community control or aftercare supervision may take the child into custody.

The current provision regarding detention of youth alleged to be in violation of community control, section 985.215(g), F.S., allows a court to continue to detain a youth in a consequence unit if the violation involves a new violation of law.

A consequence unit is defined as a secure facility specifically designated by the DJJ for children who are taken into custody under s. 985.207, F.S., 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.].

#### 1. New Law Violations

Under current law, if the violation involves a new charge of delinquency which qualifies the child for detention under s. 985.215, F.S., the child may be detained in a facility other than a consequence unit. If the child is not eligible for detention for the new charge of delinquency, the child may be held in the consequence unit pending a hearing and is subject to the time limitations specified in s. 985.215, F.S. [s. 985.231(1)(a)1.c., F.S.,].

If a consequence unit is not available, the child must be placed on home detention with electronic monitoring. Currently, there is only one consequence unit in operation in the state.

#### 2. Technical Violations

In those instances where the violation of community control involves a "technical" violation, such as being out past curfew, or not reporting to the juvenile probation officer, or missing school, there is no statutory authorization for detention, unless the child would otherwise qualify for detention based on the risk assessment instrument and the provisions of s. 985.215, F.S.

#### 3. Considering the Felony Underlying Community Control Status

In the recent case of N.E.W. v. Portesy, 23 FLW D1428 (2nd DCA, 1998) the Second District Court of Appeals 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 **any** form of 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 community control, but will not qualify for detention.

For example, if a juvenile is on community control for robbery and begins "skipping" school, and violating curfew, there is no statutory authority which provides for that youth to be detained or held in a consequence unit. As a result, the youth would be returned to community control. If that same youth then snatches a purse and is arrested for petit theft, that offender would not qualify for secure detention. In addition, unless the offender resides in the one area of the state where a consequence unit is available, this offender would be released on home detention with electronic monitoring. If the offender breaks the monitor, he would be returned to home detention with another monitor.

### **Failure to Appear**

Florida statutes do not provide for detention of juveniles who fail to appear for a properly noticed court appearance, unless the child otherwise meets the detention criteria set forth in s. 985.215, F.S. The risk assessment instrument currently used by the DJJ requires detention of any youth who is

delivered with a judicial order requiring detention regardless of the points scored in the risk assessment instrument. However, due to the requirement under s. 985.213(2), F.S., that court orders placing a child in detention care must comply with statutory provisions and the risk assessment instrument, youth can not be lawfully detained under court orders which have no basis in statutory authority. See, N.E.W. v. Portesy, 23 FLW D1428 (2nd DCA, 1998).

The court may utilize its contempt power to punish a youth who fails to appear. Under s. 985.216, F.S., the court may place the child in secure detention for 5 days for a first offense or 15 days for a second or subsequent offense.

**B. EFFECT OF PROPOSED CHANGES:**

**Detention Criteria For Domestic Violence**

HB 2037 eliminates the pre-requisite that a victim of domestic violence sustain actual physical injury before allowing a judge detain a child under this section.

In addition, the bill expands the options available for detention to include non-secure or home detention. In the context of domestic violence cases where detention of the child is needed to protect the victim from further injury, the use home detention or nonsecure detention would be within the discretion of the judge. As a practical matter, however, it is expected that the use of home detention would be confined to those cases where the parents of the child live separately, and the child could be placed in the custody of a parent who is not the victim, or does not reside with the victim. As drafted, however, the bill does not expressly restrict the use of home detention as described above.

An example of language which would restrict the use of home detention in such cases could be as follows: "A child placed in home detention under this provision shall not be placed in the home where the victim resides."

**Violations of Community Control**

With regard to violations of community control, the pcb addresses the problem explained in the robbery example discussed previously. Under the pcb, if the underlying offense qualifies the youth for detention, and the youth is alleged to have committed a violation of community control, the child may be detained for the violation of community control. If the youth qualifies for secure detention under this provision, the youth may be detained in a consequence unit in lieu of detention.

In cases where the underlying offense does not qualify the child for detention, the child may be detained in a consequence unit for alleged violations of community control or aftercare as provided in s. 985.231(1)(a)1.c., F.S. If a consequence unit is not available, the pcb provides as follows:

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

**Failure to Appear**

The pcb authorizes a court to continue the detention of a child up to 5 additional days if the child is detained on an order for a failure to appear and has at least two prior failures to appear on the same case. The bill also provides that failure to notify the clerk or defense counsel of the youth's current address is not grounds to excuse a nonappearance.

**Court Orders**

The pcb also adds a provision which clarifies that regardless of the decision of the juvenile probation officer at intake concerning detention, juveniles who are brought in on a pick-up order issued by a

judge must be detained until the detention hearing is conducted. The effect of this provision is to codify what is currently the practice of the DJJ.

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:

Sections 985.213, 985.215, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 985.213, F.S., regarding juvenile detention criteria for cases involving domestic violence.

Section 2. Reenacts certain sections of Florida Statutes for purposes of incorporation.

Section 3. Amends s. 985.215, F.S., regarding juvenile detention.

Section 4. Reenacts certain sections of Florida Statutes for purposes of incorporation.

Section 5. Providing an effective date.

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
DJJ expenditures	\$9,841,500		
2. <u>Recurring Effects:</u>			
DJJ expenditures	\$4,616,058	\$4,616,058	\$4,616,058
3. <u>Long Run Effects Other Than Normal Growth:</u>			
N/A			
4. <u>Total Revenues and Expenditures:</u>			
DJJ expenditures	\$14,457,558	\$4,616,058	\$4,616,058
See also Fiscal Comments.			

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 DJJ notes that the portion of the bill regarding domestic violence and pick-up would have no impact on the department.

The DJJ's estimate of the fiscal impact on the remaining portions of the bill has a **very significant** caveat that reads: "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."

The above caveat is significant because, with regard to violations of community control and aftercare the DJJ takes the **total** number of youth referred to DJJ for **all** violations of community control and aftercare in fiscal year 1997-98, 8,369 and assumes they will all require an average of 3 additional days of **secure** detention. On this basis the DJJ projects a need to construct 69 additional secure detention beds. The estimate does not take into account the following factors which would substantially reduce the projections and estimates:

First, not all 8,369 referrals are second, or third time violators of community control of aftercare supervision. The bill only authorizes secure detention for second and third (or subsequent) violations. It is entirely possible, if not probable, that the majority of the 8,369 referrals were first time violators, and would therefore not be eligible for secure detention under the bill.

Second, the use of detention for second or third time violators is not mandatory, but rather a matter of discretion for the judge.

This portion of the fiscal estimate accounts for more than half of the DJJ's total \$14,457,558 estimate of fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

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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 adopted an amendment which clarified the availability of home detention in domestic violence cases. The amendment prohibits the placement of a juvenile on home detention within the same residence where the victim resides when it is necessary to protect the victim from future injury.

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Staff Director:

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David De La Paz

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David De La Paz