

STORAGE NAME: h1763s1a.frc.doc
DATE: March 13, 2002

HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: CS/HB 1763 (PCB JJ 02-01)

RELATING TO: Juvenile Justice

SPONSOR(S): Fiscal Responsibility Council and Committee on Juvenile Justice and Representative Barreiro

TIED BILL(S):

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

- (1) JUVENILE JUSTICE YEAS 6 NAYS 0
 - (2) FISCAL RESPONSIBILITY COUNCIL YEAS 15 NAYS 3
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The bill revises provisions of Chapters 984 and 985, F.S., related to juvenile detention in settings other than secure detention facilities to provide for supervision through the use of electronic monitoring. The bill expands the circumstances in which a juvenile offender may be placed or continued in detention care, including secure detention. Custody and detention provisions are amended for the purpose of facilitating secure detention of a juvenile offender who is charged with an act of terrorism. The bill also replaces "staff-secure shelters" references with "extended shelter stay" to effect revisions to Chapter 984, F.S., that are intended to maximize use of limited CINS / FINS resources.

Section 985.231, F.S., is substantially amended. The bill creates s. 985.2311, F.S., which contains substantive provisions concerning placement in a juvenile probation program. The bill creates s. 985.2312, F.S., which contains substantive provisions concerning commitment of a juvenile offender to the Department of Juvenile Justice (DJJ). The bill creates s. 985.2313, F.S., which limits the authority of the court to residentially place certain committed misdemeanor offenders, except as specified in the section. Section 985.404(4), F.S., which concerns DJJ's transfer authority, is amended for purposes of conformity with s. 985.2313, F.S. The definition of "temporary release" is amended. Provisions relating to the predisposition report are amended.

The bill amends s. 985.201, F.S., to clarify that the general jurisdiction of the court over a juvenile offender extends to the offender's 19th birthday, except as specifically authorized in the section. The bill creates s. 985.24, F.S., for purposes of addressing cost of care recovery by DJJ. It also amends s. 985.4045, F.S., which concerns sexual misconduct by DJJ employees, for purposes of providing a definition of "juvenile offender." The bill amends s. 985.4075, F.S., to address a recommendation of the Auditor General and to clarify legislative intent with regard to the expenditure of funds associated with one-time startup funding for juvenile justice purposes.

Please refer to "Fiscal Comments" for an explanation of anticipated expenditures and cost-savings associated with the bill.

The bill requires DJJ to develop a plan to implement the provisions of the act and provides an effective date of July 1, 2003.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Children and Families in Need of Services

Chapter 984, F.S., relates to children and families in need of services (CINS / FINS). A "child in need of services" is defined in s. 984.03(9), F.S., to mean a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Children and Family Services for an adjudication of dependency or delinquency, and for whom there has been a finding by the court that the child has:

(a) Persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services;

(b) Been habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation pursuant to ss. 232.17 and 232.19, F.S., and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services; or

(c) Persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and is beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.

Pursuant to a hearing, the court may order a CINS youth be placed for up to 35 days in a temporary shelter if such placement is required because a parent, custodian, or guardian is unavailable to take immediate custody of the child; or shelter placement is needed in order to provide an opportunity for the child and family to agree upon conditions for the child's return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an agreement.

If a child is formally adjudicated as a child in need of services, the court may order such child be placed for up to 90 days in a staff-secure shelter if:

- (a) The child's parent, guardian, or legal custodian refuses to provide food, clothing, shelter, and necessary parental support for the child and the refusal is a direct result of an established pattern of significant disruptive behavior of the child in the home of the parent, guardian, or legal custodian;
- (b) The child refuses to remain under the reasonable care and custody of his or her parent, guardian, or legal custodian, as evidenced by repeatedly running away and failing to comply with a court order; or
- (c) The child has failed to successfully complete an alternative treatment program or to comply with a court-ordered sanction and the child has been placed in a residential program on at least one prior occasion pursuant to a court order under this chapter.

Jurisdiction

Generally, the jurisdiction of the court over a juvenile offender does not extend beyond the child's 19th birthday, except in circumstances expressly described in statute. Section 985.201, F.S., outlines the jurisdictional authority of the court over juvenile offenders. Additionally, there are statements concerning the jurisdiction of the court in ss. 985.231, 985.31, and 985.313, F.S. Generally, the jurisdictional statements contained outside s. 985.201, F.S., restate the jurisdiction of the court as contained in that section. However, there appears to be a conflict between s. 985.201, F.S., and s. 985.231, F.S., as to whether the general jurisdiction of the court extends to the juvenile offender's 19th birthday or the juvenile offender's 21st birthday.¹

Detention

Presently, ss. 984.03 and 985.03, F.S., provide identical definitions for the term "detention care," which is defined to include not only the temporary care of a juvenile offender in a state-operated secure detention facility, but the "temporary care" by the state in a child's own home or in a nonsecure setting. The Department of Juvenile Justice (DJJ or the department) reports that nonsecure detention is seldom used and that the agency is not funded for this activity. Sections 984.03 and 985.03, F.S., also provide identical definitions for the terms "detention center or facility" and "secure detention center or facility."

The circumstances in which a juvenile offender may be taken into custody are described in s. 985.201, F.S. The parameters for the use of detention care, including the circumstances in which it is appropriate to hold an offender in secure detention, are outlined in ss. 985.213 and 985.215, F.S. Specific circumstances described in these sections limit the authority of both DJJ and the court to place or hold a juvenile offender in any form of detention care. Additionally, s. 985.214, F.S., prohibits the use of detention care in certain circumstances.

¹ See s. 985.201(4)(a), F.S., and s. 985.231(1)(a)3, F.S.

Predisposition Reports

Section 985.229, F.S., describes the circumstances in which the court may order a predisposition report. A predisposition report is prepared by DJJ, but may involve a multidisciplinary assessment of the offender's needs. A predisposition report must be ordered in the case of a juvenile offender for whom residential placement is contemplated. A comprehensive evaluation of the offender's physical health, mental health, substance abuse, and academic, educational, or vocational needs may be ordered in connection with the predisposition report.

Probation

The court having jurisdiction over a juvenile offender for whom adjudication has been withheld or for whom an order of adjudication has been entered pursuant to a finding of delinquency, may place that offender in a probation program. Probation programs include daytreatment programs which offer structured-day supervision and on-site school instruction. Section 985.228(4), F.S., governs the authority of the court to place offenders for whom adjudication has been withheld into probation programs. Section 985.231(1)(a)1, F.S., governs the court's probation authority over adjudicated delinquents.

Commitment

The court's powers of disposition over a child who has been adjudicated delinquent are detailed in s. 985.231, F.S. This section has 3 subsections, 19 paragraphs, 42 subparagraphs, 4 sub-subparagraphs, and 4 sub-sub-subparagraphs. Sub-subparagraph 3 of paragraph (a) of subsection (1) of section 985.231, F.S., provides the court with the unfettered authority to commit a child who has been adjudicated delinquent to the department for placement in a residential commitment program. Residential commitment options are as follows:

<i>Residential Commitment Level</i>	<i>Average Length of Stay</i>	<i>Average Cost Per Day</i>
Low risk	135 days	\$85 per day
Moderate risk	213 days	\$75 per day
High risk	345 days	\$95 per day
Maximum risk	578 days	\$131 per day

Typically, DJJ makes a recommendation as to whether the child should be committed for residential placement, and if so, to what commitment level. The court generally follows DJJ's recommendation.² The court must enter a written order specifying the reasons for departure if the disposition order varies from the recommendation of the department. Following commitment, DJJ determines the particular program the offender will be placed in within the specified commitment level.

² DJJ recently provided House staff with information that the court followed DJJ's recommendation 83% of the time. According to DJJ, in 17% of cases, a judge committed a youth when the department had not recommended commitment.

Temporary Release

Section 985.03, F.S., provides a definition of “temporary release” to describe the terms and conditions under which a child may be temporarily released from a residential commitment facility or allowed home visits. Currently there are no limitations on when, in the course of the offender’s residential placement, the program may seek temporary release. The definition does not specify the maximum period of time that may be considered a “temporary release.” The only statutory limitation on the conditions of temporary release is that periods of temporary release from moderate-risk, high-risk, or maximum-risk residential programs must have the approval of the court and the program.

C. EFFECT OF PROPOSED CHANGES:

Please refer to the “Section-By-Section Analysis” for an explanation of the “Effect of Proposed Changes.”

D. SECTION-BY-SECTION ANALYSIS:

Sections 1 through 9.

Sections 1 through 9 of the bill amend ss. 984.03, 984.05, 984.09, 984.10, 984.12, 984.14, 984.15, 984.225, and 984.226, F.S., respectively. Together, these amendments to Chapter 984, F.S., facilitate the ability of providers of services to CINS / FINS children and families to maximize the use of limited resources consistent with legislative objectives for these programs. The continuum of CINS / FINS services is preserved by amending references to “staff-secure shelters” to provide instead for “extended shelter stay,” which allows shelters to keep children longer in less restrictive (and less expensive) settings while providing community overlay services. The bill limits case-staffing requirements and clarifies the circumstances under which adjudication may occur. The bill also clarifies provisions relating to shelter placement as a sanction for contempt of court.

Sections 1 and 10.

The bill amends the definition of “detention care” provided in ss. 984.03(18) and 985.03(18), F.S. As amended, the definition of “detention care” deletes references to “nonsecure detention” and “home detention” and instead provides that “detention care” may include the supervision of the offender through the use of electronic monitoring in conjunction with a court-ordered condition of confinement to a designated residence during designated hours.

Sections 984.03(19) and 985.03(19), F.S., which provide a definition for “detention center or facility,” are amended to provide that such centers or facilities must be secure facilities, in conformity with the amendments to ss. 984.03(18) and 985.03(18), F.S. Sections 984.03(47) and 985.03(47), F.S., which provide a definition for “secure detention center or facility,” are amended to provide a definition of “secure detention,” in conformity with the amendments to ss. 984.03(18) and 985.03(18), F.S.

Section 10 of the bill also amends the term “temporary release” to specify that youth committed to low-risk, moderate-risk, or high-risk residential programs may be allowed periods of temporary release for no more than 3 consecutive days no sooner than 30 days prior to the anticipated date of successful completion of the residential component of commitment. Youth placed in maximum-risk residential programs may not be temporarily released. Temporary release must be for the purpose of transitioning the offender out of the residential program and into the home community. Although

periods of temporary release will be deemed approved unless affirmatively objected to, a requirement of notice is added to the definition. As amended, s. 985.03(53), F.S., requires the residential program to notify the court, the state attorney, and the juvenile probation officer of the intent to provide temporary release no later than 15 days prior to the first anticipated date of temporary release.³

Additionally, the definition of the term “residential commitment level” is amended for purposes of correcting a cross-reference.

Sections 11, 26, and 27.

As amended, s. 985.201(4), F.S., clarifies that the general jurisdiction of the court over a juvenile offender does not extend beyond the child’s 19th birthday. Section 985.201(4), F.S., details circumstances in which the court may retain jurisdiction beyond the offender’s 19th birthday:

1. The court may retain jurisdiction over an offender committed for placement in a high-risk or maximum-risk residential program for purposes of allowing the offender to complete a conditional release program. This jurisdiction may not be retained beyond the offender’s 22nd birthday.
2. The court may retain jurisdiction over an offender committed for an intensive residential treatment program for offenders aged 10 to 13 years of age until the offender’s 21st birthday for purposes of allowing the offender to complete the program.
3. The court may retain jurisdiction over an offender committed for residential placement in a juvenile prison until the offender’s 21st birthday for purposes of allowing the offender to complete the program.
4. The court may retain jurisdiction over an offender committed for residential treatment in a juvenile sex offender program until the offender’s 21st birthday for purposes of allowing the offender to complete the program.
5. The court may retain jurisdiction over an offender committed for placement in a residential program for serious or habitual juvenile offenders until the offender’s 21st birthday for purposes of allowing the offender to complete the program.

Section 26 of the bill amends s. 985.31(3)(k), F.S., and section 27 of the bill amends s. 985.313, F.S., to conform with the amendments to ss. 985.03 and 985.201, F.S., in sections 10 and 11 of the bill.⁴

Section 12.

Section 985.207, F.S., is amended to conform with the amended definition of “detention care” in sections 2 and 3 of the bill. The section is also amended to conform with the new provisions concerning a juvenile offender who is charged with an act of terrorism in sections 14 and 16 of the bill.

Sections 13, 15, 28, and 33 through 42.

³ The amended definition of “temporary release” addresses concerns raised in the “Report of the Workgroup on the Classification and Placement of Juvenile Offenders,” September 20, 2001. *See* Recommendation 10.

⁴ Additionally, the apparent conflict with s. 985.201, F.S., as reflected in a jurisdictional statement contained in s. 985.231(1)(a)3, F.S., is removed by the amendment to s. 985.231, F.S., and the creation of s. 985.2312, F.S. *See* sections 12 and 14 of the bill.

Section 13 of the bill amends s. 985.2075, F.S., to conform with the amended definition of “detention care” in sections 1 and 10 of the bill. Section 34 of the bill amends s. 216.136(8)(a), F.S., and section 15 of the bill amends s. 985.214, F.S., for the same purposes. Sections 28, 33, 37, 38, and 39 of the bill amend cross-references to conform with amendments to ss. 984.03 and 985.03, F.S. as reflected in section 10 of the bill. Sections 35 and 36 of the bill respectively amend provisions in ss. 316.635(4) and 318.143(2), F.S., which relate to the power of the court to sanction contempt violations by minors charged with certain traffic offenses. These amendments conform to the provisions of ss. 984.09 and 985.216, F.S., as amended in sections 3 and 17 of the bill. Sections 40, 41, and 42 provide language to conform with sections 21, 22, 23, and 24 of the bill.

Section 14.

The parameters for the use of detention care are outlined in s. 985.213, F.S. Specific circumstances described in statute limit the authority of both DJJ and the court to place or hold a juvenile offender in any form of detention care. As amended, s. 985.213, F.S., now includes in the list of circumstances for which DJJ and the court are authorized to place a child in detention care the circumstance in which the offender is charged with an act of terrorism, as defined in s. 775.30, F.S.⁵

Section 985.213, F.S., is also amended to conform with the amended definition of “detention care” in sections 1 and 10 of the bill. The section is also amended to conform with sections 21, 22, and 23 of the bill, which respectively create ss. 985.2311, 985.2312, and 985.2313, F.S.

Section 16.

Section 985.215, F.S., is amended to conform with the amended definition of “detention care” in sections 1 and 10 of the bill. Subsection (1) of s. 985.215, F.S., is further amended to include juvenile offenders who have been charged with acts of terrorism in the list of circumstances in which DJJ is required to securely detain juvenile offenders until a hearing to determine the existence of probable cause.⁶ Subsection (2) of s. 985.215, F.S., is amended to include such offenders among those for whom continued detention, including secure detention, may be utilized upon a determination of probable cause for the offense. Section 985.215(5)(g), F.S., is amended to include such offenders among those for whom continued detention may be authorized by the court beyond the limitations described in statute.⁷

Additionally, s. 985.215(2), F.S., is amended to allow the use of detention, including secure detention, for juvenile offenders who have been brought before the court not only on allegations of violating the conditions of probation or conditional release supervision, but also offenders brought before the court on allegations of violation of court-ordered detention supervision. The amendment conforms with current legislative intent expressed in s. 985.231(1)(a), F.S., which allows a child to

⁵ Section 775.30, F.S., defines the term “terrorism” to mean an activity that:

(1)(a) Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or

(b) Involves a violation of s. 815.06; and

(2) Is intended to:

(a) Intimidate, injure, or coerce a civilian population;

(b) Influence the policy of a government by intimidation or coercion; or

(c) Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

⁶ Such hearing must occur within 24 hours of the child being taken into custody. See s. 985.215(2), F.S.

⁷ Except as provided in s. 985.215(g), F.S., a juvenile offender may not be held in detention care for more than 21 days prior to the commencement of an adjudicatory hearing, nor more than 15 days prior to the entry of an order of adjudication. Section 985.215(10), F.S., further limits the use of detention care after the entry of an order of adjudication.

be placed in detention care as a consequence upon a finding of violation of the conditions of supervision.⁸ Further, the bill provides the court with authority to order a consequence placement of any offender who commits a second or subsequent violation of supervision conditions while awaiting disposition of any pending offense or while awaiting residential placement. Such offenders may be ordered to an available low-risk or moderate-risk residential bed serving that judicial circuit until disposition or placement.

Paragraphs (b) through (j) of s. 985.215(6), F.S., which relate to cost of care recovery, are repealed. Cost of care recovery is addressed in section 24 of the bill, which creates s. 985.24, F.S., to address cost of care recovery for all of Chapter 985.

Finally, subsection (10) of s. 985.215, F.S., is amended for purposes of clarifying the circumstances in which it is appropriate to use, or to continue to use, detention care for a juvenile offender who has been adjudicated and is awaiting placement in a residential commitment program. Detention care through the use of electronic monitoring supervision in conjunction with a court-ordered condition of confinement to a designated residence during designated hours is authorized for any juvenile offender who is awaiting residential placement. Juvenile offenders meeting the admission criteria for secure detention placement are authorized to be securely detained pending residential placement, subject to the following limitations of current law:

1. Offenders awaiting placement in moderate-risk residential programs may not be held in secure detention longer than 15 days after the entry of the commitment order.⁹
2. Offenders awaiting low-risk or moderate-risk residential placement may also be held for up to 5 days pursuant to a finding of violation of the court-ordered conditions of detention supervision; an additional 5 days may be imposed for subsequent findings.
3. Offenders awaiting placement in a high-risk or maximum-risk residential program may be detained until placement.

Section 17.

The bill amends s. 985.216(2), F.S., which relates to the placement of juvenile offenders in secure facilities as punishment for contempt of court. References to children in need of services are repealed, as the court has jurisdiction over these youth pursuant to the provisions of Chapter 984, F.S., rather than Chapter 985, F.S. Section s. 985.216(5), F.S., is amended to conform with the amended definition of "detention care" in sections 1 and 10 of the bill.

Section 18.

Section 985.228(4), F.S., is amended to remove language concerning the conditions of a probation program for a juvenile offender for whom adjudication has been withheld. Instead, the court is authorized to proceed in accordance with s. 985.2311, F.S., which is created in section 21 of the bill and which outlines the authority of the court to enter conditions of probation supervision. All of the options available to the court pursuant to current s. 985.228(4), F.S., continue to be available to the court in s. 985.2311, F.S.

Section 19.

⁸ Section. 985.2311(5), F.S., which is created in section 13 of the bill, continues to provide consequences for offenders who violate the condition of community-based supervision programs.

⁹ The time limits expressed in s. 985.215(10), F.S, generally exclude Saturdays, Sundays, and legal holidays.

Section 985.229, F.S., is amended to require, rather than to simply permit, the court to order a predisposition report. However, the court can waive this requirement if a predisposition report has been completed within the past year. The predisposition report is a multidisciplinary assessment of the offender's risk classification and treatment needs. The predisposition report may include a comprehensive evaluation of the juvenile offender's physical health, mental health, substance abuse, and academic, educational, or vocational needs, if so ordered by the court. At the recommendation of the Classification and Placement Workgroup, s. 985.229, F.S., is also amended to require that, if ordered, the comprehensive evaluation be completed within 20 days.¹⁰

Section 20.

Section 985.231, F.S., which details the court's powers of disposition, currently has 3 subsections, 19 paragraphs, 42 subparagraphs, 4 sub-subparagraphs, and 4 sub-sub-subparagraphs. The bill substantially amends s. 985.231, F.S., in an effort to clarify the provisions and authorities provided in the section.

Subsection (1) of amended s. 985.231, F.S., allows the court to place an offender in a probation program, pursuant to the provisions of s. 985.2311, F.S., which is created in section 21 of the bill. All of the options available to the court pursuant to current s. 985.231(1)(a)1, F.S., continue to be available to the court in s. 985.2311, F.S.

Subsection (2) of amended s. 985.231, F.S., allows the court to commit an offender to the department pursuant to the provisions of s. 985.2312, F.S., which is created in section 22 of the bill. The court generally retains its commitment authority as provided in current law, except as provided in ss. 985.2312(4) and 985.2313, F.S., which are respectively created in sections 22 and 23 of the bill.

Language in current s. 985.231(1)(a)2, F.S., authorizing the court to commit an offender to a licensed child-caring agency is removed. DJJ reports that the agency does not contract with, nor operate as, a licensed child-care agency.¹¹ The bill repeals this language.

Section 21.

Subsection (4) of s. 985.228, F.S., and sub-subparagraphs 'a' through 'd' of subparagraph 1 of s. 985.231(1)(a), F.S., currently specify the circumstances and conditions in which the court may place a juvenile offender in a probation program. Section 21 of the bill creates s. 985.2311, F.S., for purposes of clarification. All of the options available to the court pursuant to current law, continue to be available to the court in s. 985.2311, F.S., including the following:

- A penalty component including, but not limited to, restitution, community service, curfew, or revocation or suspension of driving privilege;
- A rehabilitation component including, but not limited to, substance abuse treatment, mental health treatment, or school or other educational program attendance;
- Random testing for purposes of detecting and monitoring the presence of alcohol or controlled substance, as appropriate;
- Requirement that parent or legal guardians participate in family counseling as necessary for rehabilitation of the offender; and

¹⁰ See Recommendation 12, "Report of the Workgroup on the Classification and Placement of Juvenile Offenders," September 20, 2001.

¹¹ DJJ staff has indicated a belief that this provision is a "hold-over" from the days when both delinquent child and dependent children were committed to the Department of Health and Rehabilitative Services, which operated such programs for committed youth.

- Requirement that parent or legal guardians participate with the offender in fulfilling a court-imposed sanction.

Subsection (5) of s. 985.2311, F.S., amends provisions relating to allegations of violation of probation or conditional release supervision. Either DJJ or the state attorney may bring a juvenile offender before the court on an affidavit alleging violation. The state attorney represents the state in a hearing seeking sanction upon an allegation of violation. If the offender has been taken into custody for the alleged violation pursuant to s. 985.207, F.S., then s. 985.215, F.S., governs whether the offender can be held in detention care pending a probable cause hearing on the allegation of violation. The bill amends current law to allow a juvenile offender who has been taken into custody pursuant to an allegation of violation to be held in secure detention prior to the probable cause hearing, notwithstanding the provisions of s. 985.215, F.S., if the offender:

1. Has a record of failure to appear at court hearings;
2. Has a record of law violations prior to court hearings;
3. Has a record of violent conduct resulting in physical injury to others; or
4. Is found to have been in possession of a firearm.

In these circumstances, the probable cause hearing must occur within 24 hours of taking the offender into custody. If probable cause is found for the violation, the offender may continue to be detained pursuant to s. 985.215, F.S. The bill clarifies that any appointment of counsel for a juvenile offender who denies the allegations of violation must be in accordance with the provisions of s. 985.203, F.S.¹² Upon a finding by the court that the child has violated the conditions of probation or conditional release, the court may impose the following sanctions:

1. Modify or continue the offender's probation or conditional release program.
2. Order a consequence placement of the offender in an available low-risk or moderate-risk residential bed serving that judicial circuit for up to 5 days for a first violation, and up to 15 days for a second or subsequent violation.
3. Commit the offender to the department, subject to the limitations of ss. 985.2312 and 985.2313, F.S.

Section 22.

The bill creates s. 985.2312, F.S., to clarify and limit the court's authority to commit a juvenile offender to the department for placement in a residential program. This authority is presently found in sub-subparagraph 3 of paragraph (a) of subsection (1) of section 985.231, F.S. Commitment must be for the purpose of exercising active control over the juvenile offender and may also:

- Provide the offender with an alternative residential environment;
- Provide the offender with on-site school instruction in a structured-day, nonresidential supervision program; or
- Facilitate the transition of the offender out of the residential component of an order of commitment and into the community through nonresidential supervision in a conditional release program.

¹² Under current s. 985.231(1)(a)1.c., F.S., the court is directed to appoint counsel upon the request of any juvenile offender who denies the allegations of violation. The bill clarifies that although the offender has a right to counsel at such proceedings, any appointment of counsel must be pursuant to a determination of indigency in accordance with s. 985.203, F.S.

DJJ may exercise its transfer authority pursuant to s. 985.404(4), F.S., if a juvenile offender is not successful in a conditional release program. Alternatively, DJJ may seek a sanction for the violation pursuant to s. 985.2311(5), F.S.

The bill provides certain limitations on the authority of the court to residentially place certain misdemeanor offenders, as specified in s. 985.2312(5), F.S. The limitations are detailed in section 23 of the bill, which creates s. 985.2313, F.S. With this notable exception, the court otherwise retains most of its authority to commit a juvenile offender to the department. Provisions relating to disposition authority in cases involving serious or habitual offenders are retained in subsection (5) of s. 985.2312, F.S. Provisions relating to disposition authority in cases involving sex offenders are retained in subsection (6) of s. 985.2312, F.S. However, substantive provisions concerning treatment of sex offenders that are currently found in s. 985.231(3), F.S., are reconstructed and moved to s. 985.308, F.S., in section 25 of the bill.¹³

Additionally, s. 985.2312, F.S., provides that residential commitment programs must provide the court with quarterly reports as to the progress of the offender in the residential treatment program, unless the court requests monthly reports. Current law requires such reports on a monthly basis.

Provisions that were previously found in s. 985.231, F.S., concerning cost of care recovery in commitment cases are now contained in s. 985.24, F.S., which is created in section 24 of the bill.

Section 23.

Current law provides the court with the authority to commit a child who has been adjudicated delinquent to the department for placement in a residential commitment program, without regard to the presenting offense or the offender's prior history with DJJ. Typically, DJJ makes a recommendation as to whether the child should be committed for residential placement, and if so, to what commitment level. The court generally follows DJJ's recommendation.¹⁴ The court must enter a written order specifying the reasons for departure if the disposition order varies from the recommendation of the department. DJJ reports that in about 17% of cases resulting in commitment, the court has ordered the offender to residential placement even though the department did not recommend commitment. Following commitment, DJJ determines the particular program the offender will be placed in within the specified commitment level.

A report by the Office of Public Policy and Program Accountability (OPPAGA) recently reviewed juvenile commitment trends.¹⁵ According to the OPPAGA report:

- Juvenile court referrals for all offenses **declined 11%** between FY 95-96 and FY 99-00.
- Judicial commitments to DJJ **increased 39%** between FY 95-96 and FY 99-00.
- The Seriousness Index score¹⁶ for all commitment levels has declined between FY 95-96 and FY 99-00.

During FY 99-00, 23.5% of all residential commitments were for a misdemeanor.¹⁷ OPPAGA also examined the criminal history of the misdemeanor commitments and found that 77% had no prior adjudicated felony offense, and 35% had no prior felony offense whatsoever.

¹³ Section 985.308, F.S., relates to juvenile sex offender treatment programs.

¹⁴ DJJ reports that the courts follow the recommendation of the department about 83% of the time.

¹⁵ See OPPAGA Information Brief, "Misdemeanant and Non-Law Violation Youth in Juvenile Justice Commitment Beds," Report No. 01-49.

¹⁶ The Seriousness Index scores adjudicated offenses as follows: 8 for a violent felony, 5 for a property or other felony, 2 for a misdemeanor, and 1 for "other delinquency" offenses. The scores are summed for each individual offender and then combined to obtain an average score for the program or commitment level.

DJJ's 2000 Outcome Evaluation Report provides the following information about the criminal history of juvenile offenders who are served in daytreatment probation programs¹⁸ as compared to juvenile offenders who are served in low-risk residential commitment programs:

	<i>Daytreatment</i>	<i>Low-risk residential</i>
Average Prior Charges	6.0	6.0
Average Prior Violent Felonies	0.4	0.3
Average Prior Property Felonies	1.0	1.2
Average Seriousness Index Score	15.1	15.5
Average Seriousness of Disposition Offense	3.7	3.5

Although these offenders look similar in terms of their criminal histories and presenting offenses at the time of disposition, success demonstrated by these programs, as reflected in the same report, should be considered as well:

	<i>Daytreatment</i>	<i>Low-risk residential</i>
Average Rate of Non-Recidivism (no re-adjudication within one year)	67%	55%

The cost to the state associated with these placements is as follows:

	<i>Daytreatment</i>	<i>Low-risk residential</i>
Average Per Diem	\$34	\$85
Average Length of Stay	180 days	137 days
Average Annual Cost Per Youth	\$6,120	\$11,645

Thus, according to DJJ's own data, daytreatment programs are more successfully and less-expensively serving the same types of juvenile offenders as are presently being served in low-risk residential commitment programs.¹⁹ In spite of the demonstrated performance of these daytreatment programs and the fact that the programs are regularly reported by DJJ as being the most cost-effective programs in the state, DJJ's most recent Long-Range Program Plan contemplates the elimination of these programs.²⁰

The bill ensures the continuation of these cost-effective daytreatment programs within the juvenile justice continuum of services. Pursuant to s. 985.2313, F.S., which is created in section 23 of the bill, when the court commits to the department a juvenile offender, who:

¹⁷ According to data contained in DJJ's Delinquency Profile and further refined in the OPPAGA analysis, "commitment for a misdemeanor offense" as used in this context means that a misdemeanor offense was the most serious charge before the court at the time of disposition. OPPAGA identified 2,393 such offenders. Although DJJ has contested the accuracy of this court, DJJ's own delinquency profile reported 3,470 such offenders in residential commitment programs for that same time period.

¹⁸ Daytreatment probation programs offer structured-day supervision and on-site school instruction.

¹⁹ DJJ's 2000 Outcome Evaluation Report states that system-wide, only about 38% of youth served are considered non-recidivists.

²⁰ See DJJ's "Long-Range Program Plan Fiscal Year 2002-2003 Through Fiscal Year 2006-2007," pp. 108-109, p. 125; "Long Range Program Plan Fiscal Year 2001-2002 Through Fiscal Year 2005-2006," pp. 20-21.

- Is before the court for an offense that would be a misdemeanor if committed by an adult; and
- Has not previously been charged with a misdemeanor offense involving violence or any felony offense; and
- Has not previously been placed with DJJ by the court

the court must hold the residential placement component of such commitment in abeyance and instead commit the child to the department for placement in a nonresidential structured-day supervision program offering on-site school instruction or in a program that employs the multisystemic therapy treatment model. The court may impose, as a condition of such commitment, a condition of supervision provided in s. 985.2311, F.S.

This provision is intended to offer an intermediate alternative for juvenile offenders who would otherwise be placed in residential commitment programs. The requirement that such nonresidential commitment programs offer on-site school instruction is intended to protect public safety by removing these offenders from mainstream schools, while offering the offender an opportunity to be rehabilitated in a community-based environment. The alternate provision allowing placement in a program employing the multisystemic therapy treatment model recognizes that daytreatment programs offering on-site school instruction do not currently exist in all areas of the state. The multisystemic therapy treatment model utilizes certified therapists to work with offenders in their school, home, and community environments in a highly structured and controlled supervision program.²¹

If a juvenile offender who has been committed to the department pursuant to the conditions of s. 985.2313, F.S., subsequently violates the conditions of commitment through an act other than the commission of a new felony offense, the department may use its transfer authority pursuant to s. 985.404, F.S., to place the offender in either:

- A secure detention facility for up to 5 days as a consequence for the violation; or
- A low-risk or moderate-risk residential program for up to 28 days as a consequence for a subsequent violation.

If the offender violates the conditions of commitment subsequent to receiving a 28-day consequence placement, or if the initial violation involves a new offense that would be a felony if committed by an adult, the department has full authority to proceed in accordance with s. 985.404, F.S.

Section 24.

Currently, ss. 985.215(6) and 985.231(1)(b), F.S., provide for recovery of certain costs of care and custody when a child is placed with the department in detention supervision or residential commitment. Provisions concerning cost of care recovery are reconstructed and moved to s. 985.24, F.S., which is created in section 24 of the bill.

²¹ National research has cited the multisystemic therapy treatment model as being one of the most cost-effective treatment programs serving juvenile offenders in a nonresidential setting. See OPPAGA 2002 Justification Report, "Department of Juvenile Justice Probation and Community Corrections Program" (report number pending). The Report notes that DJJ currently only has four contracts to provide this service in the state.

Section 25.

Section 985.308, F.S., which relates to juvenile sex offender commitment programs, is amended to add language currently provided in s. 985.231(3), F.S.

Section 29.

Section 29 of the bill amends s. 985.316, F.S., which relates to conditional release supervision. It deletes a reference to postcommitment probation for purposes of clarification. Offenders who are on conditional release supervision have a different legal status than offenders on probation supervision. Following residential placement, a committed offender typically continues under the supervision of the department on conditional release status. While under such supervision, the offender is subject to DJJ's transfer authority, as provided in s. 985.404, F.S. An offender may be ordered to a period of probation following the term of commitment, which may include residential placement and community-based conditional release. However, such "postcommitment" probation is not legally distinguishable from "regular" probation. For purposes of clarity, references to "postcommitment probation" are repealed by the bill and clarification is provided as to whether the reference should be to conditional release or probation.

Section 30.

The bill amends s. 985.404(4), F.S., to add nonresidential, community-based supervision programs offering structured-day supervision and on-site school instruction to the list of commitment programs for which the department is authorized to exercise its transfer authority. The bill also amends s. 985.404(10)(a), F.S., to conform with the amended definition of "detention care" in sections 1 and 10 of the bill.

Section 31.

The bill adds a definition of "juvenile offender" to s. 985.4045, F.S., which relates to sexual misconduct by employees of the department or any program operated by a provider under contract with the department.

Section 32.

Section 985.4075, F.S., which relates to one-time startup funding for juvenile justice purposes, is amended to address a recent recommendation from the Auditor General.²² Intent is clarified regarding the circumstances in which DJJ may use an appropriation for "start-up" funding. The amendment limits the department's ability to expend funds appropriated for contracted services on fixed capital outlay projects.

Section 43.

Following the recommendation of the Classification and Placement Workgroup, the bill directs DJJ to develop protocols in order to ensure uniformity in the comprehensive evaluation process described in s. 985.229, F.S.

²² See "Fixed Capital Outlay Appropriations and Contracted Services for Beds, Florida Department of Juvenile Justice Operational Audit," Auditor General Report No. 02-057, Finding 5, p. 7.

Section 44.

Recognizing that the bill may impact delivery of services throughout the juvenile justice continuum, the bill allows DJJ to consult with the appropriate House and Senate substantive and fiscal staff of jurisdiction in order to develop an implementation plan in accordance with the provisions of this act. DJJ must present a preliminary report for implementation in connection with its legislative budget request by September 15, 2002. The legislative budget request must be in accordance with, and in contemplation of the implementation of, the provisions of this act. DJJ must submit its final implementation plan no later than January 1, 2003.

Section 45.

The act takes effect July 1, 2003.

III. **FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. **FISCAL IMPACT ON STATE GOVERNMENT:**

1. **Revenues:**

None.

2. **Expenditures:**

See fiscal comments.

B. **FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. **Revenues:**

None.

2. **Expenditures:**

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See Fiscal Comments.

D. **FISCAL COMMENTS:**

The amendments to Chapter 984, F.S., provided in sections 1 through 9 of the bill, provide flexibility in the way CINS / FINS providers deliver services in an effort to allow them maximum use of fiscal resources. During Special Session C, funding for staff-secure shelters was reduced by \$3.6 million and other services were reduced by \$2 million.

The bill revises provisions of Chapters 984 and 985, F.S., related to juvenile detention in settings other than secure detention facilities to provide for detention supervision through the use of electronic monitoring. This is consistent with budget reductions approved during Special Session C.

The impact of the provision regarding consequence placement of youth who violate supervision is indeterminate. Judges currently have the authority to order youth who violate terms of supervision into secure detention through a contempt of court finding. Adding an option to utilize less expensive low and moderate risk commitment beds may result in cost savings. However, these savings could be offset by increased utilization of a residential placement as a consequence given the new option that would be available to judges.

There should be indeterminate savings from diverting certain misdemeanor youth from residential placement into less costly day treatment and other non-residential options. This will further offset any costs of providing for consequence placements.

The bill will prohibit the department from diverting funds appropriated for operations to fixed capital outlay projects. Such diversions have been routine over the past several years. The department cites s. 985.4075, F.S., which allows for the use of funds for start-up costs, as its authority for this practice. This was criticized in a recent Auditor General report (02-057) which recommended a change in statute to clarify Legislative intent related to this provision.

The Department of Juvenile Justice has not provided an analysis of the committee substitute or an estimate of fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 8, 2002, the Fiscal Responsibility Council adopted a strike-everything amendment and made the bill a council substitute. The council substitute is substantially similar to the bill except as follows:

- The Council Substitute provides the court with authority to order a consequence placement of any offender who commits a second or subsequent violation of supervision conditions while awaiting disposition of any pending offense or while awaiting residential placement. Such offenders may be ordered to an available low-risk or moderate-risk residential bed serving that judicial circuit until disposition or placement.
- The Council Substitute allows the court to order a consequence placement of a juvenile offender in available low-risk or moderate-risk residential beds serving that judicial circuit for up to 5 days for a first violation, and up to 15 days for a second or subsequent violation, of the conditions of probation or conditional release.
- The Council Substitute narrows the scope of newly-created s. 985.2313, F.S., to provide for alternatives to residential commitment for juvenile offenders who meet each of the three criteria that follow: (1) are before the court for a misdemeanor; (2) have not previously been charged with a misdemeanor offense involving violence or any felony offense; and, (3) have not previously been placed with DJJ by the court. These youth may be committed for placement in either structured daytreatment programs offering on-site school instruction or in community-based supervision programs employing the multisystemic therapy treatment model in lieu of residential placement. If an offender violates the conditions of such commitment, DJJ may exercise its authority to transfer the offender to a low-risk or moderate-risk residential program for up to 28 days as a consequence for certain violations.
- The Council Substitute requires DJJ to consult with the appropriate House and Senate substantive and fiscal staff of jurisdiction in order to develop an implementation plan in accordance with the provisions of this act. DJJ must present a preliminary report for implementation in connection with its legislative budget request by September 15, 2002. The legislative budget request must be in accordance with, and in contemplation of the implementation of, the provisions of this act. DJJ must submit its final implementation plan no later than January 1, 2003.
- The Council Substitute provides an effective date of July 1, 2003.

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE :

Prepared by:

Lori Ager

Staff Director:

Lori Ager

AS REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

James P. DeBeaugrine

Staff Director:

David Coburn