

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 Juvenile Justice

SPONSOR(S): Adams

TIED BILLS: **IDEN./SIM. BILLS:** SB 792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Juvenile Justice</u>	<u></u>	<u>Hogge</u>	<u>Hogge</u>
2) <u>Safety & Security Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill would:

- Permit a child to be taken into custody for violating the conditions of pretrial release set by the court.
- Permit the detention of a child that absconds from home or nonsecure detention or otherwise violates the terms of release while awaiting placement in a residential facility, or commits a new law violation, or that intentionally fails to appear for trial.
- Require that a child be placed in secure detention upon intake if alleged to have absconded from home or nonsecure detention or otherwise violated the terms of post-adjudication release.
- Increase the time a child may be held in preadjudication detention, and repeal the 15-day limit on the length of detention following adjudication but prior to disposition.
- Increase the length of time a child awaiting placement in a low- or moderate-risk residential program could be held in secure detention care and require that the only detention option for a child committed to a high-risk or maximum-risk residential program be secure detention.
- Make the court responsible for determining the appropriate restrictiveness level for a child committed to a residential program, changing the Department of Juvenile Justice (DJJ) role into one that is advisory.
- Permit the court to retain jurisdiction over a child beyond the age of 18, and the child's parents or guardians, until all costs, fees, and costs associated with court-appointed counsel have been satisfied, and permit counties to adopt a mandatory court cost of up to \$50 to fund local juvenile crime initiatives.

The bill has an indeterminate, but possibly significant, negative recurring fiscal impact on both state and local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0273.JJ.doc

DATE: 1/22/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill implicates the House principle to “maintain public security.” It attempts to increase the physical security of the community by permitting the expanded use of detention by the court and the DJJ for certain conduct on the part of youth alleged to have committed or found to have committed a delinquent act. It also attempts to do so by providing a revenue source for counties to fund juvenile crime prevention and other needs related to juvenile crime.

The bill also implicates the principle to “promote personal responsibility” by authorizing the court to retain jurisdiction for the purpose of holding a child responsible for payment of all fees and costs beyond the age of 18, and for attending required court hearings. The bill also authorizes the court to retain jurisdiction for the purpose of holding parents responsible for payment of fees and costs. It also authorizes a contempt order against a parent who knowingly and willfully fails to bring their child to the adjudicatory hearing or prevents the child from appearing. Finally, the bill provides additional consequences for certain conduct.

B. EFFECT OF PROPOSED CHANGES:

This bill proposes numerous changes to state policy concerning the use and length of detention for juveniles. It covers all phases of the process, from custody and initial intake to adjudication, and to disposition through postcommitment placement.

The Legislature has defined “detention care”¹ to mean “the temporary care of a child in secure, nonsecure, or home detention, pending a court adjudication or disposition or execution of a court order.”² 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 DJJ 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 DJJ staff pending adjudication, disposition, or placement.

The state and the counties, other than the fiscally constrained counties in certain circumstances, jointly fund detention care.³ In this context, “detention care” has been defined as limited to “secure detention.”

¹ Statutory references to “detention” do not include postcommitment residential facilities even though being committed to a residential facility is a form of “detention.” However, for purposes of state policy and, specifically, the changes in this bill, the two should not be confused.

² s. 985.03(18), F.S.

³ s. 985.686, F.S.

Counties are required to pay for predisposition detention costs and the state pays for postdisposition costs. The proportion of the cost of secure detention borne by the counties is determined by the percentage of youth in the detention centers that are predisposition and their length of stay. As the percentage of predisposition youth and days increase, the counties' share of detention costs will also increase. For the 2,057 detention center beds available, the average daily population or utilization rate for FY 2006-07 was 89%.

PRE-ADJUDICATORY RELEASE

The bill would permit a law enforcement officer to take a child into custody in an additional circumstance—when a child on release without any form of detention violates the conditions of pretrial release. It would also give the court the authority to impose conditions for pretrial release such as requiring the child to obey all laws, not possess or carry a weapon, abstain from using alcoholic beverages or illegal drugs, and attend school. However, the court could not impose conditions for pretrial release in a manner that effectively converted it into home detention. (s.2 of bill) (amends s.985.101)

Current law: The law currently permits a law enforcement officer to take a child into custody when there is probable cause to believe the child has violated the conditions of probation, home detention, post-commitment probation, or conditional release supervision; or has absconded or escaped from residential commitment.⁴ In nearly one-half of the cases (64,517) referred to the DJJ in FY 2006-07, the child was released without any form of detention. Judges will sometimes impose behavioral orders in these cases, but some judges have expressed concern that their authority to do so may be called into question.

USE OF DETENTION

A. All types of detention authorized

The bill would authorize the use of detention in any determination or order, and specifically authorize the court to continue to detain a child taken into custody and placed on detention while awaiting placement, when a child absconds from home or nonsecure detention or otherwise violates the terms of release while awaiting placement in a residential facility, or there is probable cause to believe the child has committed a new law violation. (ss.3 & 6 of bill) (amends ss.985.24 and 985.255)

Current law: The court must make certain findings before placing a child in secure, home, or nonsecure detention.⁵ These include finding that the child presents a substantial risk of not appearing at a subsequent hearing or causing bodily harm to others, or has a history of committing a property offense, has been found to be in contempt of court, or requests protection from imminent bodily harm. Further, except when a child is charged with committing domestic violence, all determinations and court orders concerning placement of a child into detention care must be based on a risk assessment of the child and comply with all requirements and criteria of this section.⁶

⁴ s. 985.101, F.S.

⁵ s. 985.24, F.S.

⁶ s. 985.245, F.S.

Under certain circumstances, a court may continue to detain a child taken into custody and placed in home or nonsecure detention or in secure detention prior to the detention hearing.⁷ These circumstances include when the child is an escapee from a residential treatment program, wanted in another jurisdiction for a felony, charged with a delinquent act and seeks protection from imminent bodily harm, charged with possession and discharge of a firearm on school grounds, charged with a capital felony, alleged to have violated probation or conditional release supervision, or detained for failure to appear when the child has previously willfully failed to appear for a hearing on the same case.

The bill would specify the circumstances in which a child on home or nonsecure detention may be transferred to secure detention: when the child is alleged to have absconded from home or nonsecure detention or otherwise violates the terms of release while awaiting placement in a residential facility, or there is probable cause to believe the child has committed a new law violation while on home or nonsecure detention and awaiting placement in a residential facility. (s.8 of bill) (amends s.985.265)

Current law: *If a child is detained, the DJJ may transfer the child from nonsecure or home detention care to secure detention care only if significantly changed circumstances warrant such transfer.⁸*

B. Secure detention required for absconding from home or nonsecure detention

The bill would require a child to be placed in secure detention upon intake if the child is alleged to have absconded from home or nonsecure detention or otherwise violates the terms of post-adjudication release prior to placement in a residential facility. The authority to make this determination would be removed from the juvenile probation officer. (s.5 of bill) (amends s.985.25)

Current law: *The juvenile probation officer shall receive custody of a child who has been taken into custody from the law enforcement agency and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is required. During the period of time from the taking of the child into custody to the date of the detention hearing, the initial decision as to the child's placement into secure detention care, nonsecure detention care, or home detention care shall be made by the juvenile probation officer under ss. 985.24 and 985.245(1). The juvenile probation officer shall base the decision whether or not to place the child into secure detention care, home detention care, or nonsecure detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the DJJ under s. 985.245.⁹*

C. Secure detention authorized for failure to appear for trial

When a child intentionally fails to appear for trial, the bill would permit the court to have the child held in secure detention until the conclusion of the trial and permit the court to hold the parent in contempt for knowingly and willfully failing to bring or otherwise preventing the child from appearing for trial. (s.10 of bill) (new s.985.28) The determination or order would not have to be based upon a risk assessment. (s.4 of bill) (amends s.985.245)

⁷ s. 985.255, F.S.

⁸ s. 985.265(1), F.S.

⁹ s. 985.25(1)(b), F.S.

Current law: The Legislature has made a specific finding that decisions to detain should be based in part on a prudent assessment of risk and be limited to situations where there is clear and convincing evidence that a child presents a risk of failing to appear.¹⁰

All determinations and court orders regarding the use of secure, nonsecure, or home detention shall be based primarily upon findings (those relevant to failure to appear) that the child presents a substantial risk of not appearing at a subsequent hearing; or has committed contempt of court by intentionally disrupting the administration of the court or intentionally disobeying a court order.¹¹ All determinations and orders placing a child in detention care must be based on a risk assessment.¹² The risk assessment instrument shall take into consideration any prior history of failure to appear.

A child may be taken into custody by a law enforcement officer for failing to appear at a court hearing after being properly noticed.¹³

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 the court if the child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure.¹⁴

The court may punish any child for contempt for interfering with the court or with court administration.¹⁵ The Legislature has expressed intent that the court restrict and limit the use of contempt powers with respect to commitment of a child to a secure facility. A child who commits direct contempt of court or indirect contempt of a valid court order may be taken into custody and ordered to serve an alternative sanction or placed in a secure facility. A child may be placed in a secure facility for purposes of punishment for contempt of court if alternative sanctions are unavailable or inappropriate, or if the child has already been ordered to serve an alternative sanction but failed to comply with the sanction. A delinquent child who has been held in direct or indirect contempt may be placed in secure detention for up to 5 days for a first offense and 15 days for a second or subsequent offense. If a child is charged with indirect contempt of court, the court must hold a hearing within 24 hours. The court shall review the placement of the child every 72 hours to determine whether it is appropriate for the child to remain in the facility. The court may order the withholding or suspension of a child's driver's license or driving privilege.

LENGTH OF DETENTION

A. From intake to adjudication

The bill would increase the length time that a child may be held in pre-adjudication detention of any type under a special detention order from 21 days (+9 additional days for certain serious felonies) days to 30 days (+15 additional days). The bill would allow certain youth, such as those that

¹⁰ s. 985.02(4), F.S.

¹¹ s. 985.24(1), F.S.

¹² s. 985.245(2)(b), F.S.

¹³ s. 985.101(1), F.S.

¹⁴ s. 985.255(1), F.S.

¹⁵ s. 985.037(1), F.S.

abscond from home detention, violate the terms of release while awaiting placement, or commit a new law violation, to be held in secure detention until the child is placed in a residential facility. (s.7 of bill) (amends s.985.26) According to the DJJ, for FY 2006-07, approximately 14.6% of the detained youth are released after Day 20 through Day 30. After Day 30, 5.1% were released. Nearly all others are released before Day 21. Nearly half of all detained youth are released within the first 24-48 hours.

Current law: A child may not be held in secure, nonsecure, or home detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.¹⁶ However, upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional 9 days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual. The time limits do not include periods of delay resulting from a continuance granted by the court for cause on motion of the child or his or her counsel or of the state. Upon the issuance of an order granting a continuance for cause on a motion by either the child, the child's counsel, or the state, the court shall conduct a hearing at the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention of the child and the need for further continuance of proceedings for the child or the state.

B. From postadjudication to disposition

The bill would repeal the 15-day limit on the length of time an adjudicated child may be held prior to disposition. According to the DJJ, in roughly 50% of the cases, adjudication and disposition occur simultaneously. So in at least one-half of the cases, the elimination of the 15-day limit would be of no consequence. Generally speaking, adjudication is the trial phase and disposition the sentencing phase. At disposition, the court determines whether to commit the child, place the child on probation, or not adjudicate.

Current law: A child may not be held in detention care for more than 15 days following the entry of an order of adjudication.¹⁷

C. From disposition to placement

The bill would Increase the length of time a child awaiting placement in a low- or minimum-risk residential program could be held in secure detention care following commitment at disposition, and require that the detention options of a child committed to a high-risk or maximum-risk residential program be limited to secure detention.

For a child awaiting placement in a low-risk program, the child could be held in secure detention for an 15 additional days, rather than the current 5 days, for a subsequent violation of the conditions of home or nonsecure detention, the terms of any release, or the conditions of any electronic monitoring agreement.

¹⁶ s. 985.26(2) & (4), F.S.

¹⁷ s. 985.26(3), F.S.

For a child awaiting placement in a moderate-risk program, the child could be held in secure detention for an additional 10 days, 15 rather than 5, and could be held until placed (rather than an additional 15) when the child is alleged to have absconded from home or nonsecure detention, violated the terms of release or electronic monitoring, or committed a new law violation. (s.9 of bill)(amends s.985.27)

***Current law:** This section addresses the time frames for holding a child in detention between disposition (i.e., when commitment is ordered) and the placement in a residential program occurs. Residential programs are not “detention centers” as that term is used in Chapter 985, F.S. Detention refers to a temporary status while pending adjudication or while awaiting placement following disposition. If awaiting placement:*

- *In a low-risk residential program, the child must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays.¹⁸ A child placed in home detention care, nonsecure detention care, or home or nonsecure detention care with electronic monitoring, may be held in secure detention care for 5 days, if the child violates the conditions of the home detention care, the nonsecure detention care, or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.*
- *In a moderate-risk program, the child must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. The court may order additional time in detention, not to exceed 15 days from the commitment order. A child placed in home detention care, nonsecure detention care, or home or nonsecure detention care with electronic monitoring, may be held in secure detention care for 5 days if the child violates the conditions of the home detention care, the nonsecure detention care, or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.*
- *In a high or maximum-risk program, the child must be held in detention—home, nonsecure, or secure—until placed.*

JUDICIAL ROLE IN RESIDENTIAL PLACEMENT DECISIONS

The bill would declare legislative intent that the court is in the best position to determine whether or not to commit a child to the DJJ and determine the most appropriate restrictiveness level. (s.12 of bill) (amends s.985.43) It would also give the court primary authority to determine the appropriate restrictiveness level for a secure residential placement and changes the DJJ role would become advisory to the court.¹⁹ Specifically, it would eliminate the requirement that the court make a specific finding by a preponderance of the evidence in order to have a child placed at a restrictiveness level different than that recommended by the DJJ. The bill would also repeal a provision permitting this

¹⁸ s. 985.27, F.S.

¹⁹ In practice, this provision may produce a different result in a very limited number of cases. In an effort to examine judicial satisfaction with DJJ recommended restrictiveness levels, House staff recently asked the DJJ to identify, over the last three years, the percentage of cases in which judges agreed with the restrictiveness level recommended by the Department commitment manager. This data indicated that judges agreed with the recommendations of DJJ commitment managers in the overwhelming majority of cases, on average approximately 85 percent. However, there were several circuits, the 1st, 3rd, 8th and 17th, that had consistently and substantially lower rates of agreement. All but one of these circuits are in the North Region of the Department of Juvenile Justice. *Data provided to House Juvenile Justice Staff by the Department of Juvenile Justice, October 2007.*

judicial finding to be appealed, presumably since no specific finding would now be required. (s.13 of bill) (amends s.985.433)

Current law: If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the DJJ, such determination shall be in writing or on the record of the hearing.²⁰ The determination shall include a specific finding of the reasons for the decision to adjudicate and to commit the child to the DJJ. The juvenile probation officer then recommends the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child. The court must consider the DJJ's recommendation in making its commitment decision, but must commit the child to the DJJ at the restrictiveness level identified or may order placement at a different restrictiveness level. The court must make a special finding establishing its reasons for disregarding the DJJ recommendation by a preponderance of the evidence. Any party may appeal the court's findings resulting in a modified level of restrictiveness.

LIABILITY FOR FEES AND COSTS

The bill would permit courts to retain jurisdiction over a child after the child turns 19, and the child's parents or guardians, until all costs, fees, and costs associated with court-appointed counsel have been satisfied, regardless of adjudication. (s.1 of bill) (amends s.985.0301)

Current law: Parents or legal guardians of a minor child are liable for the payment of fees, charges, and costs of representation by court-appointed counsel.²¹ Liability is imposed in the form of a lien against the property of the parents or legal guardians. If the court finds that a defendant-recipient or parent is not in contempt for failure to pay attorney's fees or costs, the court can allow additional time for payment, or reduce or revoke the assessed fees or costs.²² Defendant-recipients or parents that are not in willful default may petition the court to defer payment of all or part of the attorney's fees or costs.²³ Fees are charged to the parent of the child for cost of care at a rate of \$1 per day for home detention, probation, or other supervision; and \$5 per day when placed in secure detention or otherwise in the custody of the DJJ. The court must waive or reduce fees upon a finding of indigence and significant financial hardship. Fees can be directed to the child in lieu of the parent if the child reaches 18 prior to the detention or disposition hearing at which fees are imposed. For the parent or child to be liable for these fees, the child must be adjudicated or have had adjudication withheld, or violated a court order.²⁴

²⁰ s. 985.433(7), F.S.

²¹ s. 27.52(6), F.S.

²² s. 27.561(3), F.S.

²³ s. 938.29, F.S.

²⁴ s. 985.039(1). See also, s.985. 0395, F.S., wherein the Legislature has approved a pilot program in the 4th and 11th Judicial Circuits, allowing the court to waive cost of care fees required to be paid by the parent for successful completion of a parenting class.

COURT COST FOR COUNTIES FOR JUVENILE CRIME NEEDS

The bill would permit counties to adopt a mandatory court cost of up to \$50, earmarked for the administration of a county juvenile crime prevention fund. Proceeds could only be used to fund local juvenile crime prevention programs, the creation of consequence or suspension centers, and other areas of local concern relating to juvenile crime. (s.14 of bill) (new s.938.20)

C. SECTION DIRECTORY:

Section 1: Permits courts to retain jurisdiction over a child after the child turns 19, and the child's parents or guardians, until all costs, fees, and costs associated with court-appointed counsel have been satisfied, regardless of adjudication. (s. 985.0301)

Section 2: Provides that a law enforcement officer may take a child into custody for violating the conditions of pretrial release. (s. 985.101)

Section 3: Permits the court to have a child detained if it finds the child has been adjudicated delinquent and committed to the DJJ for residential placement and, while on home detention awaiting placement, the child absconded from home or nonsecure detention or otherwise violated the terms of release or there is probable cause to believe the child committed a new law violation. (s. 985.24)

Section 4: Permits the court to have a child detained for intentional failure to appear for trial without having to do so based on a risk assessment. (s. 985.245)

Section 5: Requires a child to be placed in secure detention upon intake if the child is alleged to have absconded from home or nonsecure detention or otherwise violates the terms of postadjudication release prior to placement in a residential facility. (s. 985.25)

Section 6: Permits the court to continue to detain a child taken into custody while awaiting placement following the detention hearing when the child absconds from home or nonsecure detention or otherwise violates the terms of release while awaiting placement in a residential facility, or there is probable cause to believe the child has committed a new law violation while on home or nonsecure detention and awaiting placement. (s. 985.255)

Section 7: Permits the court to have a child held in secure detention prior to adjudication for more than the currently authorized 30 days if the child is alleged to have absconded from home or nonsecure detention or otherwise violates the terms of release while awaiting placement in a residential facility, or there is probable cause to believe the child has committed a new law violation while on home or nonsecure detention and awaiting placement in a residential facility. Additionally, it repeals the 15-day time limit on post-adjudication detention.

Section 8: Specifies the circumstances in which a child on home or nonsecure detention may be transferred to secure detention—when the child is alleged to have absconded from home or nonsecure detention or otherwise violates the terms of release while awaiting placement in a residential facility, or there is probable cause to believe the child has committed a new law violation while on home or nonsecure detention and awaiting placement in a residential facility. (s.985.265)

Section 9: Changes the time limits in which a child awaiting placement in a low- and moderate-risk residential programs may be held in detention. (s.985.27)

Section 10: Permits the court to have a child held in secure detention until the conclusion of the trial when the child refuses to appear in court, runs away, or otherwise intentionally avoids a court appearance. Permits the court to hold a parent in contempt for knowingly and willfully failing to bring or otherwise preventing the child from appearing for trial. (s.985.28)

Section 11: Cross-reference change to conform to revisions in section 7 of bill. (985.35)

Section 12: Declares that it is the intent of the Legislature that the court is in the best position to determine whether or not to commit a child to the DJJ and the most appropriate placement level. (s.985.43)

Section 13: Restates provision relating to court commitment at the same or different restrictiveness level as that identified by the DJJ. Changes the DJJ role to one that is advisory only. Eliminates the requirement that the court make a specific finding by a preponderance of the evidence in order to have a child placed at a restrictiveness level different than that recommended by the DJJ. (s.985.433)

Section 14: Provides counties with an additional revenue source to fund juvenile crime initiatives. Authorizes counties to adopt a mandatory court cost of up to \$50, specifically earmarked for the administration of a county juvenile crime prevention fund. Proceeds from this court cost could only be used to fund local juvenile crime prevention programs, the creation of consequence or suspension centers, and other areas of local concern relating to juvenile crime. (s.938.20)

Section 15: The effective date of the act would be July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments, Section II.D., of this analysis.

2. Expenditures:

See Fiscal Comments, Section II.D., of this analysis.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments, Section II.D., of this analysis.

2. Expenditures:

See Fiscal Comments, Section II.D., of this analysis.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments, Section II.D., of this analysis.

D. FISCAL COMMENTS:

HB 273 has an indeterminate fiscal impact on both state and local governments. This bill is likely to increase county detention costs and state detention costs in an indeterminate, but possibly significant, amount. Much of the bill provides judges with discretion to take certain action—discretion one can assume they will utilize to some degree. The extent of any adverse fiscal impact will depend upon the extent to which judges choose to exercise that discretion. Similarly, due to an increase in the number of cases processed, the courts may experience increased costs of an indeterminate amount.

Much of the negative fiscal impact from this bill presumably would be borne by the counties since counties are primarily responsible for pre-disposition detention costs and this stage of the process is a principal focus of the bill.

Additionally, HB 273 provides counties with a funding source in the form of a mandatory court cost (of up to \$50) to address local juvenile crime prevention and other needs. According to the clerks of court, the collection rate for mandatory assessments in juvenile cases is approximately 49%. Assuming all counties levy the full \$50 mandatory court cost and a 49% collection rate, counties would receive \$3.5M.

Staff is working with the affected entities to develop a more comprehensive and detailed fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Several sections of the bill proposing changes to state policy relative to predisposition detention, both when it can be used and the length of detention, could have the effect of requiring counties to expend funds. As a result, the requirements of Article VII, Section 18(a) of the Florida Constitution may apply. This would include the requirement that the bill be approved by a 2/3rds vote of the membership of each house on final passage.

Assuming the bill requires counties to spend funds, the next step is to determine whether or not one of several possible exemptions apply. The two exemptions most relevant to this bill would be the exemption for a criminal law and the exemption due to an insignificant fiscal impact.

With regard to the criminal law exemption, on November 12, 2004, the Circuit Court for the 2nd Judicial Circuit declared s. 985.2155, F.S.,²⁵ unconstitutional because it violated the mandates provision of the Florida Constitution.²⁶ This section of law required counties to participate in funding the cost of juvenile detention. The court found that the law did not meet any of the constitutional exemptions or exceptions and, therefore, required a 2/3rds vote for passage. The court found that it was not a criminal law. The bill did not pass by the necessary vote. This decision was not appealed and the Legislature has not defined this term pursuant to the authority granted by Art. VII, Section 18(e).

With regard to the fiscal impact exemption, the impact will be considered “insignificant” if it does not exceed an amount equal to an average of \$0.10 multiplied by the current state population, or approximately \$1.9M for FY 2007. This bill is expected to have a negative fiscal impact on counties of an indeterminate, but possibly significant, amount. Staff is working with the affected entities to develop a more comprehensive and detailed fiscal impact so that the potential scope of the impact can be determined.

If the bill does not fall within one of the exemptions, it can nonetheless bind counties if it the Legislature finds that it fulfills an important state interest and meets one of several criteria. The most relevant would be that the Legislature has authorized counties to enact a funding source that can be used to generate an amount of funds sufficient to fund any required expenditures. This bill does provide counties with an additional revenue source that could generate up to \$3.5M, depending on the assumptions utilized, to fund juvenile crime initiatives. This could be construed as providing the necessary offsetting revenue, although the extent to which it does so depends upon the extent of any negative fiscal impact on counties as a result of this bill. (See Fiscal Comments, section II.D., of this analysis.)

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill does not provide any new, or modify any existing, rule authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 7 includes conditions relative to the length of preadjudication detention that instead appear to be applicable to postadjudication detention. This is confusing. The sponsor intends to amend the bill to address this drafting issue.

²⁵ Later transferred to s. 985.686, F.S.

²⁶ Alachua County, Florida, et. al v. Anthony Schembri, in his capacity as Secretary of the State of Florida, Department of Juvenile Justice, et. al, (Fla. 2nd Cir. Ct.)

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The sponsor has directed staff to prepare a “strike-everything after the enacting clause” amendment. The amendment is expected to include several changes to the substance of the bill.