

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 273 Juvenile Justice

SPONSOR(S): Safety & Security Council; Adams

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Juvenile Justice</u>	<u>6 Y, 0 N</u>	<u>Hogge</u>	<u>Hogge</u>
2) <u>Safety & Security Council</u>	<u>12 Y, 3 N, As CS</u>	<u>Hogge/Davis</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u>Leznoff</u>	<u>Hansen</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 pre-adjudicatory release set by the court.
- Permit the detention of a child that absconds from home or nonsecure detention care 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 care upon intake if alleged to have absconded from home or nonsecure detention or otherwise violated the terms of post-adjudication release.
- Increase, from 21 days to 30 days, the time a child charged with certain felony offenses may be held in pre-adjudication detention, and increase the allowance for additional days from 9 to 15.
- 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 provide that the only detention option for a child committed to a high-risk or maximum-risk residential program is 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 fees and costs associated with court-appointed counsel have been satisfied.
- Provides counties with a new revenue source in the form of a mandatory court cost of up to \$50 to fund local juvenile crime initiatives.

The bill has an indeterminate fiscal impact on state and county governments.

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 Department of Juvenile Justice (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. For FY 2006-07, the average daily population on home detention was 1,744 youth.³

Most youth are not placed on detention care prior to adjudication, but are released.⁴

The state and the counties, other than the fiscally constrained counties in certain circumstances, jointly fund detention care.⁵ 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 2006-07 Comprehensive Accountability Report, Florida Department of Juvenile Justice, p. 73.

⁴ According to the Department of Juvenile Justice, for FY 2006-07, approximately 109,000 of the 146,000 referrals were releases. These included some youth charged with felonies.

⁵ s. 985.686, F.S.

Counties are required to pay for predisposition secure detention costs. The state pays for post-disposition secure detention costs. The county share of overall secure detention costs is a function of the relative share of youth in the detention centers that are predisposition as opposed to postdisposition and their relative length of stay. As the percentage of predisposition youth and days increase, the counties' share of detention costs also increases and the state share decreases. For FY 2006-07, detention centers operated at 89% of statewide capacity with an average daily population of 1,831, or 89% of the 2,057 beds available. The average length of predisposition stay was 12 days.⁶

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 pre-adjudicatory release. It would also give the court the authority to impose conditions for pre-adjudicatory 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 pre-adjudicatory release in a manner that effectively converted it into home detention. (ss.2 & 3 of bill) (creates s. 985.031; 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.⁷ In nearly 75% of the cases 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. The statewide delinquency referral rate has been trending down, standing at a 5 year low in FY 2006-07. However, the share represented by felonies has increased by 6.2%. Over the past 5 years, while the total number of youth referred for person offenses has dropped slightly, referrals for certain violent crimes have jumped dramatically – e.g., murder/manslaughter, 70%; attempted murder/manslaughter, 131%; and armed robbery, 67%.

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.4 & 7 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.⁸ 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.⁹

⁶ For fiscal year 2006-07, utilization of secure detention beds ranged from a low of 28% in Monroe County to a high of 125% in Escambia County.

⁷ s. 985.101, F.S.

⁸ s. 985.24, F.S.

⁹ 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 care prior to the detention hearing.¹⁰ 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 care may be transferred to secure detention care: when the child is alleged to have absconded from home or nonsecure detention care 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 care and awaiting placement in a residential facility. (s.9 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.¹¹*

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

The bill would require a child to be placed in secure detention care upon intake if the child is alleged to have absconded from home or nonsecure detention care 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.6 of bill) (amends s.985.25)

Current law: *The juvenile probation officer receives custody of a child who has been taken into custody by law enforcement and is required to review the facts in the law enforcement report or probable cause affidavit and make further inquiry as may be necessary to determine whether detention care is required. From the time the child is taken into custody to the time the detention hearing is held, the initial placement decision is made by the juvenile probation officer.¹² The juvenile probation officer must base any decision to detain the child on an assessment of risk using the risk assessment instrument and procedures developed by the DJJ under s. 985.245.¹³*

C. Secure detention care 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 care 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.11 of bill) (creates s.985.28) The bill would dispense with the requirement of a risk assessment. (s.5 of bill) (amends s.985.245)

Current law: *The Legislature has made a specific finding that decisions to detain a child should be based in part on a prudent assessment of the risk and be limited to situations where there is clear and convincing evidence that a child presents a risk of failing to appear.¹⁴*

All determinations and court orders regarding the use of secure, nonsecure, or home detention care must 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

¹⁰ s. 985.255, F.S.

¹¹ s. 985.265(1), F.S.

¹² ss. 985.24 and 985.245(1), F.S.

¹³ s. 985.25(1)(b), F.S.

¹⁴ s. 985.02(4), F.S.

contempt of court by intentionally disrupting the administration of the court or intentionally disobeying a court order.¹⁵ Determinations and orders placing a child in detention care must be based on a risk assessment.¹⁶ The risk assessment instrument must 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.¹⁷

A child taken into custody and placed into nonsecure, home detention or 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 (i.e., illegal drugs) 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.¹⁸

The court may punish any child for contempt for interfering with the court or with court administration.¹⁹ 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 must review the placement of the child every 72 hours to determine if it is appropriate for the child to remain in the facility. The court may also order the withholding or suspension of driving privileges.

D. Secure detention care permitted for violation of probation

When a child is taken into custody for violating probation and a consequence unit is not available, the bill would permit the child to be held in secure detention. (s.15 of bill)(amends s.985.439)

Current law: *When a child is taken into custody for violating probation, they must be placed in a consequence unit if one is available. The law makes no provision for an alternative if one is not available. A “consequence unit” is a secure facility specifically designated by the department for children who are taken into custody for violating probation or postcommitment probation.*

LENGTH OF DETENTION

A. From intake to adjudication

The bill would increase the length time that a child charged with certain felony offenses could be held in pre-adjudication detention of any type under a special detention order from 21 days (+9 additional days for certain serious felonies) to 30 days (+15 additional days). The felony offenses would be 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. (s.8 of bill) (amends s.985.26)

¹⁵ s. 985.24(1), F.S.

¹⁶ s. 985.245(2)(b), F.S.

¹⁷ s. 985.101(1), F.S.

¹⁸ s. 985.255(1), F.S.

¹⁹ s. 985.037(1), F.S.

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.²⁰ 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 must 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 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 care.

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

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 care, violated the terms of release or electronic monitoring, or committed a new law violation. (s.10 of bill)(amends s.985.27)

Current law: This section addresses the time frames for holding a child in detention between disposition (e.g., when commitment is ordered) and the placement in a residential program. 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 care within 5 days, excluding Saturdays, Sundays, and legal holidays.²¹ A child placed in home detention, nonsecure detention, 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 or the nonsecure detention care, or 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 care 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, nonsecure detention, 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 or nonsecure detention care, or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.

²⁰ s. 985.26(2) & (4), F.S.

²¹ s. 985.27, F.S.

- *In a high or maximum-risk program, the child must be held in detention until placed, but detention care may be home, nonsecure, or secure.*

JUDICIAL ROLE IN RESIDENTIAL PLACEMENT DECISIONS

The bill would include 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.13 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 change the DJJ role to one that would be advisory to the court.²² 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 judicial finding to be appealed, presumably since no specific finding would now be required. (s.14 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.²³ The determination must 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 over 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.²⁴ 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.²⁵ 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.²⁶ 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

²² 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.*

²³ s. 985.433(7), F.S.

²⁴ s. 27.52(6), F.S.

²⁵ s. 27.561(3), F.S.

²⁶ s. 938.29, F.S.

*for these fees, the child must be adjudicated or have had adjudication withheld, or violated a court order.*²⁷

COURT COST FOR COUNTIES FOR JUVENILE CRIME NEEDS

The bill would provide counties with a new revenue source in the form of a mandatory court cost of up to \$50. Proceeds could only be used to fund local juvenile crime prevention programs, the creation of consequence or suspension centers, and “other such areas of local concern relating to juvenile crime.” (s.16 of bill) (new s.938.20)

C. SECTION DIRECTORY:

Section 1: Amends s. 985.0301, F.S., relating to jurisdiction.

Section 2: Creates s. 985.031, F.S., relating to preadjudicatory release; circuit court authority.

Section 3: Amends s. 985.101, F.S., relating to taking a child into custody; preadjudicatory release conditions.

Section 4: Amends s. 985.24, F.S., relating to use of detention; prohibitions.

Section 5: Amends s. 985.245, F.S., relating to risk assessment instruments.

Section 6: Amends s. 985.25, F.S., relating to detention intake.

Section 7: Amends s. 985.255, F.S., relating to detention criteria; detention hearing.

Section 8: Amends s. 985.26, F.S., relating to length of detention.

Section 9: Amends s. 985.265, F.S., relating to detention transfer and release; education; adult jails.

Section 10: Amends s. 985.27, F.S., relating to postcommitment detention while awaiting placement.

Section 11: Creates s. 985.28, F.S., relating to appearance in court; pre-adjudicatory detention; contempt.

Section 12: Amends s. 985.35, F.S., relating to adjudicatory hearings; withheld adjudications; orders of adjudications.

Section 13: Amends s. 985.43, F.S., relating to predisposition reports; other evaluations.

Section 14: Amends s.985.433, F.S., relating to disposition hearings in delinquency cases.

Section 15: Amends s. 985.439, F.S., relating to violation of probation or postcommitment probation.

Section 16: Creates s. 938.20, F.S., relating to county juvenile crime prevention fund.

Section 17: Amends s. 790.22, F.S., relating to the use of certain weapons by a minor.

Section 18: Provides that this act fulfills an important state interest.

Section 19: The effective date of the act would be July 1, 2008.

²⁷ s. 985.039(1), F.S. 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.

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: This section was updated March 17 based upon additional information provided by the Department of Juvenile Justice.

The bill is expected to have an indeterminate recurring fiscal impact.

There are two provisions of the bill that may generate increased detention bed utilization. The provisions permitting a 30 day detention stay for specified juvenile offenders may generate an additional 13,752 detention days. This assumes that all applicable juveniles who would be released on day 20, 21 or 22 under current law would have been held through the 30 days authorized in the bill. In this respect, this may present a worst case scenario.

According to the Department of Juvenile Justice, if these additional service days were applied to the FY 2006-07 detention cost sharing analysis, the counties would have seen a total increase in pre-dispositional costs of \$463,889. This is based on a recalculation of total bed days to determine the new per diem based upon existing appropriation. This new per diem is then applied to the new pre-dispositional bed days. The cost represents the difference between the revised bed days counts multiplied by the revised per diem amounts vs. the current bed days and per diem amounts. This cost is based upon current appropriation and the continued cost sharing between the state and counties. There is a commensurate decrease to the state under this methodological scenario.

It is noted that above effected population of juvenile detainees is small compared to the overall detention population, this estimated maximum increase in bed days is insufficient to significantly affect the average overall length of stay in detention by all juveniles which would increase from 11.54 days to 11.66 days.

The other provision that may generate increased detention bed utilization relate to the requirements that a child be placed in secure detention care upon intake if alleged to have absconded from home or nonsecure detention or otherwise violated the terms of post-adjudication release. Though this could have a significant bed day impact, any estimation would be highly speculative due to the number of assumptions that would comprise the estimation.

However, the bill provides counties with a new revenue source in the form of a mandatory court cost of up to \$50 that can be used to fund, among other things, the creation of consequence or suspension centers, and "such other areas of local concern relating to juvenile crime." It is unclear if this includes

county detention costs such that it could be applied to offset any increase in detention costs incurred by counties as a result of this bill. This new revenue source could generate annual recurring revenues of at least \$1.8M based on the current 49% collection rate for similar assessments. However, based on a 100% collection rate, the revenue source has a value of \$3.5M.

Due to a possible increase in the number of cases processed, the courts may experience increased costs of an indeterminate amount at least initially but, over time, may find any increased costs offset by a reduction in the number of referrals.

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 by increasing their share of total detention costs, 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.,²⁸ unconstitutional because it violated the mandates provision of the Florida Constitution.²⁹ 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. While it can reasonably be expected to have a negative fiscal impact on counties, the amount of any impact is indeterminate.

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 bill does include this finding. As for meeting other 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 in the form of a mandatory court cost of up to \$50 that could generate up to \$3.5M, depending on the assumptions utilized, to fund, among other things, the creation of consequence or suspension centers, and “such other areas of local concern relating to juvenile crime.” It is unclear if this includes county detention costs such that it could be applied to offset any increase in detention costs incurred by counties as a result of this bill. If so, this could be construed

²⁸ Later transferred to s. 985.686, F.S.

²⁹ 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.)

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:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A. EXPLANATION OF AMENDMENT

The Safety & Security Council approved a Council Substitute. The Council Substitute included four amendments to a “remove everything” amendment recommended by the Committee on Juvenile Justice. The Council Substitute incorporates the substance of the bill as filed and a number of substantive changes. The Council Substitute differs from the bill as filed in that the Council Substitute:

1. Eliminates the proposed repeal of the 15-day time limit on the length of time a child may be held in detention care between adjudication and disposition, a change from the original bill. (s.8 of bill)
2. Limits the proposed increase in the length of time that a child could be held in pre-adjudication detention. Rather than increasing it in every case, the CS would extend the time limit from 21 days (+9 additional days for certain serious felonies) to 30 days (+15 additional days) only in the case of a child 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 (s.8 of bill) (amends s.985.26)
3. Changes legislative intent language proposed in the bill relating to the determination of restrictiveness level to a finding. (s.13)
4. Includes a new section 15, amending s. 985.439, F.S., not included in the bill by providing that a child may be detained in a facility other than a consequence unit when the child violates probation and a consequence unit is not available. (Note: A “consequence unit” is a secure facility specifically designated by the department for children who are taken into custody for violating probation or postcommitment probation.)
5. Includes a statement not included in the bill that this act fulfills an important state interest. (s.18)