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## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 14, 1998 Revised: \_\_\_\_\_

Subject: Juvenile Justice

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Dugger</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

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### I. Summary:

The CS makes the following changes to the juvenile detention statute:

- ▶ Removes the current time limits for holding a delinquent youth who has been found in contempt of court in a secure detention facility (5 days for a first offense and 15 days for a second or subsequent offense).
- ▶ Allows a youth who has failed to appear in court on two separate occasions on the same case to be eligible for detention.
- ▶ Provides that when the court has granted a continuance in a capital, life, or first degree felony case, the current time limits for detention may be extended by an additional 9 days, but may not exceed 30 days.

The CS encourages the establishment of truancy programs in juvenile assessment centers (JACs) and permits law enforcement officers to bring truant youths to such programs.

The CS lowers the amount of damages necessary for a third degree felony criminal mischief offense from \$1,000 or greater to \$500 or greater. It also lowers the amount of damages necessary for a first degree misdemeanor criminal mischief offense from less than \$1,000 to less than \$500. In addition, the CS makes it a second degree felony for a person to commit grand theft auto if he or she has two or more previous convictions for grand theft auto.

The CS requires the Department of Juvenile Justice (DJJ) and the Department of Children and Family Services (DCF) to develop cooperative agreements at the state and district levels for the provision of mental health and substance abuse treatment for youths in the juvenile justice system.

This CS substantially amends, creates, or repeals the following sections of the Florida Statutes: 985.216, 895.414, 895.415, 895.215, 790.22, 895.209, 230.23161, 860.13, 921.0022, 812.014, 895.234.

## II. Present Situation:

### Detention

Section 985.215, F.S., provides criteria for determining whether a youth taken into custody can be held in detention. To be detained, a youth must meet the statutory criteria, as well as reach a certain score on the risk assessment instrument, which is completed by an intake counselor. If a youth scores as a high risk to public safety, he or she may be placed in secure detention. If he or she scores as a low risk, he or she may be placed in nonsecure or home detention, or he or she may be released.

The following youths are eligible to be held in detention under the statutory criteria:

- ▶ A youth alleged to be an escapee or absconder from commitment or community control;
- ▶ A youth wanted in another jurisdiction for a felony offense;
- ▶ A youth requesting to be detained for his protection;
- ▶ A youth charged with committing domestic violence;
- ▶ A youth charged with a capital felony, a life felony, a first degree felony, a second degree felony that does not involve a drug violation, or a violent third degree felony, including any such offense involving the use or possession of a firearm; or
- ▶ The youth is charged with a second or third degree felony drug offense or a non-violent third degree felony *and* the youth meets one of five additional qualifiers (has a record of failing to appear, has a record of prior violations, has been released pending commitment placement, has a record of violence, or is found to possess a firearm).

If a youth is detained, he or she must be given a detention hearing before the judge within 24 hours. At this time, the judge may order the youth to be held for up to 21 days pending an adjudicatory hearing on the charge. The purpose of the initial detention hearing is to determine the existence of probable cause and the need for continued detention. The adjudicatory hearing (trial) must be commenced within 21 days.

Following an entry of an adjudication order, the youth may remain in detention for up to 15 additional days, unless the court grants a continuance for cause upon motion of the youth or state. The 21-day and 15-day time limits do not include periods of delay resulting from a continuance

granted for cause. If a continuance is granted, the court must hold a hearing every 72 hours to determine the need for further detention and further continuance of the proceedings.

Under s. 985.215(10), F.S., a youth who has been committed to the department and is awaiting dispositional placement must be removed from detention care (which includes home, nonsecure, and secure detention) within five days, except that a youth who has been committed to either a low or moderate-risk residential program can be held for a specific time period if the department obtains a court order authorizing continued detention care. However, a youth committed to either a low or moderate-risk residential program cannot be held in secure detention care beyond 15 days. *J.M., A Child v. State*, 23 Fla.L.W. 223 (Fla. 5th DCA January 14, 1998) (holding that the statute requires that a youth be placed within five days, unless the department requests and gets a court order approving the extension).

The youths awaiting placement in a low or moderate-risk residential program can also be held in home detention with electronic monitoring for an unlimited time period. If a youth violates the conditions of home detention, nonsecure detention, or the electronic monitoring agreement while awaiting placement in a low or moderate-risk residential program, he or she may be held in a secure detention facility for five days. An additional five days may be imposed if there is a subsequent violation.

Youths awaiting placement in either a high or maximum-risk commitment program, on the other hand, are required to be held in detention care or in a juvenile assignment center until placement is completed.

In addition, under s. 985.216, F.S., a delinquent youth who has been held in direct or indirect contempt of court may be placed in a secure detention facility for five days for a first offense or 15 days for a second or subsequent offense, or in a secure residential commitment facility.

### **Juvenile Assessment Centers**

The statutory provision authorizing JACs in s. 39.0471, F.S., was created in 1994 by ch. 94-209, L.O.F., as part of the 1994 Juvenile Justice Reform Act which created the department. This section has recently been transferred into the new juvenile delinquency chapter as s. 985.209, F.S., pursuant to ch. 97-238, L.O.F. It requires the DJJ to work cooperatively with substance abuse facilities, mental health providers, law enforcement agencies, schools, health services providers, and other entities involved with children to establish a JAC in each service district. According to the department, there are 15 operational assessment centers in Florida today. Three more assessment centers are currently being developed.

One of the statutorily mandated responsibilities for assessment centers is to provide central intake and screening for youths referred to the DJJ, which includes delinquent juveniles and CINS/FINS, i.e., children in need of services and families in need of services. Specifically, each assessment center is required to provide services needed to facilitate the initial screening of these youths, including intake and needs assessment, substance abuse screening, physical and mental health

screening, and diagnostic testing, as appropriate. The entities involved in the JAC are responsible for making the resources for provided services available at the same level to which they are available to the public under s. 985.209, F.S.

The respective JACs operate independently of each other, looking instead to locally identified needs, services, resources, and local participation. The statute does not provide specific guidelines for the operation or funding of the JACs. According to the DJJ, all entities participating in the development and ongoing operation of a JAC are required by policy to enter into an interagency agreement, which includes establishing a steering committee among the participating entities.

### **The DJJ and Educational Programs**

The DJJ contracts with local school districts to provide educational services for youth in the DJJ programs. Currently, there is no statutory limitation for administrative costs incurred by school districts when educational services are contracted to the DJJ.

### **Criminal Mischief**

Section 806.13, F.S., proscribes criminal mischief by making it illegal to willfully and maliciously injure or damage any real or personal property belonging to another, including the placement of graffiti on such property or other acts of vandalism. If the resulting property damage is less than \$200, then the offense is classified as a second degree misdemeanor, punishable by potential imprisonment up to 60 days in jail and/or a fine not exceeding \$500. If the resulting property damage is greater than \$200 but less than \$1,000, then the offense is classified as a first degree misdemeanor, punishable by potential imprisonment up to one year in jail and/or a fine not exceeding \$1,000.

If the property damage is \$1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water or other public service costing \$1,000 or more in labor and supplies to restore, then the offense is classified as a third degree felony under s. 806.13(1), F.S. Subsections (2) and (3) also provide for third degree felony offenses when a person willfully and maliciously defaces or damages a church or other place of worship, or willfully destroys or substantially damages any public telephone, cables, wires, fixtures or other equipment which makes the public telephone inoperative. A person convicted of a third degree felony is subject to potential imprisonment up to five years and/or a fine not exceeding \$5,000.

Any person who violates s. 806.13, F.S., may also be required to pay for the damages caused by the offense, in addition to any other penalty.

Unlike juveniles, adults are sentenced for offenses based on scores derived from sentencing guidelines and on October 1, 1998, based on scores derived from the Criminal Punishment Code. Chapter 921, F.S., prescribes how offenders are to be scored based upon current offenses, prior offense history, and victim injury. Offenses are ranked in ten levels based on the seriousness of the

offense with level 10 being the most serious. A third degree felony criminal mischief offense is currently ranked in level 2.

### **Theft of a Motor Vehicle**

Section 812.014, F.S., provides that it is a grand theft of the third degree and a felony of the third degree if, among other enumerated property, the property stolen is a motor vehicle.

Section 895.231, F.S., provides that a youth adjudicated delinquent for grand theft of a motor vehicle, upon a first adjudication, may be placed in a boot camp and be ordered to complete a minimum of 50 hours of community service. Upon a second adjudication, the judge may place the youth in a boot camp and order the youth to perform 100 hours of community service. Upon a third adjudication, the youth can be ordered to be placed in a boot camp or other treatment program and be required to complete 250 hours of community service. A youth may be placed in a boot camp, pursuant to s. 895.309, F.S., if he or she is at least 14 years of age but less than 18 years of age, is adjudicated for a felony (other than a capital felony, life felony, or violent felony of the first degree), and is committed to the DJJ.

Section 895.227, F.S., requires a state attorney to transfer a youth, regardless of the youth's age, to adult court for stealing a motor vehicle and while in possession of the motor vehicle, serious bodily injury or death was caused to a person not involved in the offense. The driver of the stolen vehicle and all willing passengers in the motor vehicle are subject to mandatory transfer to adult court.

Currently, grand theft of a motor vehicle is ranked in level 4 in the offense severity ranking chart of the sentencing guidelines pursuant to s. 921.0012, F.S., and in the offense severity ranking chart of the Criminal Punishment Code. Should the offender have a grand theft auto as his or her primary offense and the offender has three or more prior convictions for grand theft auto, an offender's score on the worksheet is multiplied by one and one-half. This multiplier is intended to increase the sentence for multiple thefts of motor vehicles.

### **Interagency Agreements and Community Partnership Grants**

County juvenile justice councils encourage the initiation and support of interagency cooperation and collaboration in addressing juvenile crime. s. 985.414, F.S. They fulfill those duties by developing county juvenile justice plans and interagency agreements to achieve the goals of the county plan. They use public and private grants to administer the county plan, assist local organizations in efforts to curtail juvenile crime, and develop an annual report. The council also designates a county representative to the district board.

The county juvenile justice councils are required to have a written interagency agreement specifying the contributions of each agency in achieving the goals of the county juvenile justice plan and their commitment to sharing information in order to meet the goals of the agreement.

However, s. 985.414, F.S., does not specify which agencies should be included in the written interagency agreement.

Section 985.415, F.S., requires all agencies applying for a Community Juvenile Justice Partnership Grant to enter into a written interagency agreement with local school authorities, local law enforcement agencies, and local representatives of the DJJ and the DCF, regardless of whether all these agencies are involved in the implementation of the project which forms the basis for the grant application.

### **Substance Abuse and Mental Health Programs in the DJJ**

Currently, the Alcohol, Drug Abuse, and Mental Health Program within the DCF is funded to provide substance abuse and mental health programs and services for youths in the DJJ programs. These services are provided to youths in the DJJ programs based on identified needs of the youths.

The DJJ has limited specialized commitment programs for youths with severe mental illness or youths who are sex offenders. The DJJ does contract with a number of agencies to provide substance abuse treatment for youths on community supervision and in commitment programs.

### **State Appeal of Restitution Orders**

The criminal adult statutes provide that the state may appeal an order denying restitution. s. 924.07(1)(k), F.S. There are no comparable provisions in ss. 985.234 and 985.235, F. S., which list the types of orders from which the state may appeal in juvenile proceedings. Consequently, appellate courts have dismissed state appeals of orders denying restitution in juvenile proceedings. *e.g., State v. C.W.*, 662 So.2d 768 (Fla. 4th DCA 1995).

## **III. Effect of Proposed Changes:**

### **Detention**

This CS makes three changes to the juvenile detention statute:

- ▶ Removes the current time limits for holding a delinquent youth who has been found in contempt of court in a secure detention facility (5 days for a first offense and 15 days for a second or subsequent offense).
- ▶ Allows a youth who has failed to appear in court on two separate occasions on the same case to be eligible for detention.
- ▶ Provides that when the court has granted a continuance in a capital, life, or first degree felony case, the current time limits for detention may be extended by an additional 9 days, but may not exceed 30 days. (The language limiting the extended detention to 30 days could create

the following anomaly: a child charged with a second degree felony could, theoretically, be held in detention due to trial continuances for longer than 30 days because there is currently no express time limitation on any continuances, while a child charged with a capital felony must be released before 30 days. As a practical matter, however, this scenario is unlikely.)

### **Juvenile Assessment Centers**

The CS authorizes and encourages juvenile assessment centers to establish truancy programs either as a central intake and screening program or to work cooperatively with any established truancy programs in the community. Such programs may be used by law enforcement officers who take truant students into custody. For purposes of this section, a truant student is defined as any student between the ages of 6 and 18 who is enrolled in school and has an unexcused absence, even if the student is not subject to compulsory school attendance.

### **The DJJ and Educational Programs**

The CS requires that administrative costs for any contract awarded for the purpose of providing educational services to youth in the DJJ programs shall not exceed 10 percent of the total contracted amount.

### **Criminal Mischief**

The CS changes the amount of damages required for a first degree misdemeanor criminal mischief from an amount greater than \$200 but less than \$1,000 to an amount greater than \$200 but less than \$500. The CS changes the amount of damages required for a third degree felony criminal mischief from an amount of \$1,000 or greater to an amount of \$500 or greater. A corresponding change is made in the offense severity ranking chart of the Criminal Punishment Code.

### **Theft of a Motor Vehicle**

Current law provides that a person committing grand theft of a motor vehicle is committing a felony of the third degree. The CS makes it a second degree felony when a person commits grand theft of a motor vehicle and he or she has previously been convicted of two or more motor vehicle thefts.

### **Interagency Agreements and Community Partnership Grants**

The CS identifies the participants who must be included in interagency agreements. The participants must include: the local school authorities, local law enforcement, and local representatives of the DJJ and the DCF. The CS deletes current language specifying that partnership grant applications must provide for the participation by the specific entities referenced above and inserts language which states that the applications must provide for participation and cooperation of the agencies or programs needed to implement the project or program.

### **Substance Abuse and Mental Health Programs in the DJJ**

The CS requires the DJJ and the DCF to establish statewide and district cooperative agreements for the provision of mental health and substance abuse treatment for youth in the juvenile justice system. Also, the CS requires the Office of Program Policy Analysis and Government Accountability to conduct a performance review of the provision of mental health and substance abuse treatment services to youths in the juvenile justice system and deliver a report to the Legislature by December 1, 1998.

### **State Appeal of Restitution Orders**

The CS provides that the state may take an appeal from an order denying restitution in a juvenile case.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

None.

### **C. Government Sector Impact:**

According to the DJJ, the CS will have the following total projected fiscal impact upon the department:

<b>FISCAL IMPACT OF SB 1734 ON DJJ</b>	<b>FY 1998-99</b>	<b>FY 1999-2000</b>
Non-recurring	\$ 27,191,700	-0-
Recurring	\$ 12,950,875	\$12,950,875
<b>TOTALS</b>	<b>\$ 40,142,575</b>	<b>\$12,950,875</b>

**The total cost of holding youths in detention for failing to appear at two separate hearings is estimated to be \$18,393,900** -- \$12,465,900 in capital outlay costs and \$5,928,000 in operational costs. According to the DJJ, in FY 96/97, there were 95,993 youths handled judicially. The department states that “if it is estimated 5% of these youths did not appear on two separate occasions on the same case, this proposal would affect 4,800 youths. At a cost of \$95 per day to detain a youth for an average length of stay in detention of 13 days, this would cost the department \$5,928,000. The 4,800 youths will generate 62,400 resident days equally distributed over a fiscal year. This will generate the need for the building of 171 new beds at a cost to the state of \$12,465,900.”

**The total cost of expanding the detention time limits for certain serious offenders is estimated to be \$18,934,910** -- \$12,830,400 in capital outlay costs and \$6,104,510 in operational costs. According to the DJJ, there were approximately 1,691 capital, life, or first degree felonies committed by juveniles in FY 96-97. The department estimates that should all of these youths be held 30 days, 176 detention beds would be needed at a construction cost of \$12,830,400 in FY 1997/98.

**The total cost of holding delinquent youths found in contempt of court in secure detention is estimated to be \$1,947,750** -- \$1,312,200 in capital outlay costs and \$635,550 in operational costs. According to the DJJ, there were about 669 youths detained for contempt of court in FY 96/97. Currently, the average length of stay for youths held in secure detention for contempt is not known. If the youths were detained an additional 10 days, it would cost the state \$1,947,750. This was determined by taking the additional length of stay (10 days) times the number of youths (669) times the cost of \$95 per day to arrive at \$635,550 annual recurring operational costs for the initial detention. The new detentions would generate a need for the building of 18 new beds at the cost to the department of \$1,312,200.

**The total cost of holding additional youths in detention due to enhancing the penalty for grand theft auto is estimated to be \$866,015** -- \$583,200 in capital outlay and \$282,815 in operational costs. There were 3,381 youths referred to the DJJ for auto theft in FY 96/97 and 1,095 of these youths were detained. The other 2,286 were not eligible for detention. However, under the CS, the DJJ believes that 10% of those youths who were not eligible for detention would become eligible (229 youths). The DJJ calculated the average length of stay (13 days) times the per diem (\$95) to project \$282,815 in operational costs. The DJJ states that this will generate the need to build 8 new beds at a cost of \$583,200.

Since the criminal penalties in this CS apply to adults, there could be a fiscal impact on the criminal justice system and the Department of Corrections. However, the Criminal Justice Estimating Conference has concluded that the criminal penalties would have no bed impact on the Department of Corrections.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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