

**STORAGE NAME:** h0205.jj  
**DATE:** February 16, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
JUVENILE JUSTICE  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 205  
**RELATING TO:** Delinquent Acts/Criminal Offenses  
**SPONSOR(S):** Representative Murman  
**COMPANION BILL(S):**

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

- (1) JUVENILE JUSTICE
- (2) JUDICIARY
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

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I. SUMMARY:

This bill makes numerous changes to the juvenile justice system. Key provisions include:

- allowing a witness under 24 years old to be impeached on the basis of an adjudication of delinquency to the same extent allowed for adult convictions;
- allowing juvenile offenses to be counted as part of an adult's "prior record" for sentencing purposes to the same extent allowed for prior adult convictions;
- requiring the clerk of the court to maintain juvenile records and to merge a person's juvenile record with their adult record if the person commits a felony before age 24.
- providing that juvenile records showing offenses and their dispositions are public record.
- requiring State Attorneys and DJJ district managers to enter into interagency agreements regarding which cases will require recommendations from DJJ.
- adding attempts to commit, and conspiracy to commit, any of the enumerated felonies to the list of offenses which qualify a juvenile offender for transfer to adult court;
- striking a current transfer provision for a juvenile offender of any age who has three (3) prior separate felony adjudications which resulted in placement in a residential commitment facility;
- creating a new mandatory direct file provision for juvenile offenders (age 16 or 17) that have been adjudicated, or have had adjudications withheld, for three (3) prior felonies or six (6) misdemeanors, or any combination of six (6) offenses, each of which occurred at 45 days apart from each other, and requiring adult sanctions for such offenders;
- prohibiting persons who have been adjudicated delinquent for a felony offense, from possessing firearms until age 24.
- providing for mandatory adult sanctions for juvenile offenders (age 14 and over) transferred to adult court for a second or subsequent violent felony, if the offender has a prior adjudication of delinquency for the commission of, attempt to commit or conspiracy to commit an enumerated violent felony;
- for juveniles transferred to adult court as matter of discretion, an adult court judge may order the offender into a DJJ residential commitment program followed by at least 1 year of aftercare supervision. Violators of the program would be subject to adult sanctions;
- creating early intervention boot camps for youth 12 years of age or older who qualify;
- requiring DJJ's cost-benefit report to include specific cost and recidivist data;
- authorizing the court to impose a \$100 civil penalty against a parent or guardian who fails to produce a juvenile for a properly noticed court appearance.

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

In fiscal year 1996-97, there were 108,324 youths charged with delinquency offenses in Florida. Out of these youths, 13,065 were charged with violent felonies. This reflects a 14.6% increase since fiscal year 1992-93. From fiscal year 1992-93 to 1996-97, there was an overall increase of 23.2% in the total number of delinquency cases received by the DJJ. Including all of their prior cases, the **108,324 youths** referred for delinquency in fiscal year 1996-97, accounted for **338,934 cases**.<sup>1</sup>

The Office of Juvenile Justice Delinquency Prevention (OJJDP) has defined "chronic offenders" as delinquent youths with three or more adjudicated offenses. Recently, the delinquency histories of the 108,324 youths referred to DJJ in fiscal year 1996-97 were examined to identify Florida's chronic offenders. The examination revealed that while "chronic offenders" made up only **16.2 %** off all juvenile offenders, they accounted for **72.1%** of the adjudicated cases, and **46.2%** of all cases.<sup>2</sup>

Because this bill makes numerous changes to several aspects of the juvenile justice system, each subject area will be discussed in this section under separate headings which will correspond to the headings of the following section's discussion of the effect of the changes proposed in the bill.

**Impeachment of Witnesses** Section 90.610(1), of Florida's Evidence Code provides:

(1) A party may attack the credibility of any witness, including an accused, by evidence that the witness has been convicted of a crime if the crime was punishable by death or imprisonment in excess of 1 year under the law under which the witness was convicted, or if the crime involved dishonesty or a false statement regardless of the punishment, with the following exceptions:

(a) Evidence of any such conviction is inadmissible in a civil trial if it is so remote in time as to have no bearing on the present character of the witness.

(b) Evidence of juvenile adjudications are inadmissible under this subsection.

**Prior Juvenile Record in Adult Sentencing** Under the Florida Criminal Punishment Code the severity of an offender's sentence for the "primary offense," which is the most serious charge before the court for sentencing, depends, in part, upon the point count that an offender receives for his or her prior record. An offender's "prior record" includes a conviction for a crime committed by the offender, as an adult or a juvenile, prior to the time of the primary offense, subject to the following limitations:

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<sup>1</sup> DJJ - *Research Digest, Chronic Offenders FY 1996-97*, Issue 19, May 1998; *Profile of Delinquency Cases and Youth s Referred 1992/93 - 1996/97*.

<sup>2</sup> DJJ - *Research Digest, Chronic Offenders FY 1996-97*, Issue 19, May 1998.

For adult offenses, convictions for offenses committed by an offender more than 10 years before the primary offense are not included in an offender's prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense. [s. 921.0021, F.S.].

For juvenile offenses, dispositions (sentences) of offenses committed by an offender within 3 years before the primary offense are included in an offender's prior record for purposes of adult sentencing. Juvenile dispositions of sexual offenses committed by the offender which were committed 3 years or more before the primary offense are included in the offender's prior record if the offender has not maintained a conviction-free record, either as an adult or a juvenile, for 3 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense. [s. 921.0021, F.S.]. It is important to note that the 3 year period starts running as soon as the juvenile commits the offense. Therefore, it is possible for a delinquent to commit an armed robbery at age 16, that would not be scored against the offender for an offense committed at age 19.

**Confidential Juvenile Record Information** The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) reports that many states have weighed and are continuing to weigh the value of maintaining the confidentiality of juvenile records against the opening of juvenile criminal records, and in effect using these records much like adult criminal records. In doing so, states weigh the need to protect juvenile offenders from their criminal records against public safety needs of the community and the public's right to know.

In an OJJDP report entitled Responses to Serious and Violent Juvenile Crime (1996), a summary is presented of current confidentiality provisions relating to serious or violent juvenile offenders in the states. Many states have opened juvenile court proceedings to the public for either crimes generally or for only violent or serious crimes. Also, many states now permit the publication of a minor's name and address if the minor was adjudicated delinquent for specified serious or violent crimes or repeat offenses. In the OJJDP report, the following information is presented:

- (1) 22 states have open hearings;
- (2) 39 states allow the release of juvenile names for certain offenses;
- (3) 45 states allow the release of court records under specified conditions;
- (4) 50 states and the District of Columbia allow the fingerprinting of juveniles;
- (5) 50 states and the District of Columbia allow the photographing of juveniles; and
- (6) 44 states maintain a statewide repository of juvenile records.

The DJJ, the courts, and the Florida Department of Law Enforcement (FDLE) are the primary agencies that maintain juvenile offender records. The DJJ may not destroy records for youth found guilty of committing a delinquent act except as provided by law. [s. 985.04, F.S.]. Juvenile records are sealed by the court and may be accessed only for certain screening purposes, or by rules of the DJJ. The public may not inspect juvenile records maintained by the DJJ without first receiving authorization from the DJJ.

Juvenile record information gathered by criminal and juvenile justice entities, law enforcement agencies, or licensed professionals engaged in the assessment or

treatment of juvenile offenders, must remain confidential. Such information may only be disclosed to authorized personnel or as otherwise permitted by a court order. [s. 985.04, F.S.].

Despite the provisions described above, some information concerning juvenile criminal records are not confidential. Section 985.04(5), F.S., provides:

(5) Notwithstanding any other provisions of this part, the name, photograph, address, and crime or arrest report of a child:

(a) Taken into custody if the child has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony; or

(b) Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors

shall not be considered confidential and exempt from the provisions of s. 119.07(1) solely because of the child's age.

**Court Records** The clerk of the court is required to maintain juvenile records until a youth reaches age 24, or age 26 for serious or habitual delinquent offenders, until 5 years after the last entry was made, or until 3 years after the death of a child, whichever is earlier. [ s. 985.05, F.S.].

Pursuant to Chapter 943 Florida Statutes, the FDLE maintains criminal records of adults and juveniles. The FDLE retains the criminal records of serious or habitual juvenile offenders for 5 years after the date the offender reaches 21 years of age. Records of all other juvenile offenders are kept for 5 years after the offender reaches 19 years of age. These records are expunged unless the offender is 18 years of age or older, and is charged with, or convicted of, a forcible felony. If this occurs, the offender's adult criminal record and juvenile criminal record are merged together and maintained. A juvenile's criminal record is also not expunged if the juvenile is adjudicated as an adult for a forcible felony. In this instance, the offender's juvenile record prior to his "adult" adjudication, is merged with his adult record. [s. 985.0515, F.S.]

**Department of Juvenile Justice Recommendations to the State Attorney** Currently, s. 985.21(4), F.S., requires the DJJ to provide a recommendation to the State Attorney regarding whether, in a particular case, charges should be brought against a juvenile and whether or not such charges should be brought in adult court (by filing an information) or juvenile court (by filing a petition for delinquency). The law requires a recommendation be made by the DJJ in every case. In many circumstances, however, a recommendation is not necessary such as in cases where a juvenile has had previous contacts with the juvenile justice system and the decision to file a petition of delinquency is virtually a forgone conclusion.

In addition s. 985.227(4), F.S., requires the State Attorney from each judicial circuit to develop and annually update written policies and guidelines to govern determinations of whether to file an information on a juvenile to prosecute him or her as an adult. These guidelines are sent to the Governor, the Speaker of the House of Representatives and

the President of the Senate every year. For juveniles falling within these guidelines, a recommendation from the DJJ is also unnecessary.

**Transferring Juvenile Offenders to Adult Court** According to a December 1998 publication by OJJDP entitled *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*, all 50 states allow for juveniles to be transferred to adult court for criminal prosecution. Among these, three states (New York, Connecticut, and North Carolina) have set the age of juvenile court jurisdiction to an upper age limit of 15. Ten states (most notably Texas, Illinois and Massachusetts) have set the upper age limit for juvenile court jurisdiction at age 16.

Under current Florida law, there are three ways for a juvenile offender charged with a criminal offense to have his or her case prosecuted in adult court. A juvenile offender transferred to adult court who is found guilty of the charged offense, or lesser included offense, must be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the adult court judge imposes juvenile sanctions pursuant to s. 985.233(4)(b), F.S. The three ways a juvenile offender can be prosecuted in adult court are indictment, waiver hearing, and direct file. Each of these will be discussed separately below:

(1) INDICTMENT - An indictment for a capital felony or a felony punishable by life imprisonment operates to require the handling of a juvenile offender as an adult. [s. 985.225(1), F.S.].

(2) WAIVER HEARING - This is a proceeding conducted in juvenile court for the judge to authorize the transfer of a juvenile's criminal case for prosecution in adult court. There are three types of waivers.

The first type of waiver is known as a *voluntary waiver*. In this type of waiver, a juvenile court judge must transfer the case to adult court if prior to the start of an adjudicatory hearing, the juvenile offender, joined by a parent or legal guardian, demands in writing to be tried as an adult. [s. 985.226(1), F.S.].

The second type of waiver is a *discretionary waiver*. Current Florida law provides the state attorney with the discretion to file a motion requesting the court to transfer a juvenile offender, 14 years-of-age or older, for prosecution as an adult for any violation of law. [s. 985.226(2), F.S.].

The third type of waiver is a *mandatory waiver*. In this type of waiver the state attorney must file a motion requesting the court to transfer a juvenile for prosecution as an adult if the juvenile offender was 14 years of age or older at the time the offense was committed, and has been previously adjudicated delinquent for murder, sexual battery, robbery, car jacking, home invasion robbery, aggravated battery, or aggravated assault, and is charged with a second or subsequent violent crime against a person. [s. 985.226(2), F.S.].

Notably absent from the list of qualifying prior violent felonies are attempts to commit and conspiracies to commit any of the listed offenses. As a result, a juvenile that has a prior adjudication of delinquency for **attempted** first degree murder who is charged with a subsequent violent crime would **not** fall within the scope of this provision while

someone with an adjudication for aggravated battery who is charged with a subsequent violent crime would fall within the scope of this section. This same omission is present in s. 985.227(2), F.S., regarding mandatory direct filing criteria discussed in subsection (3) below.

The state attorney must also move the court to transfer a juvenile who was 14 years-of-age or older at the time of committing a fourth or subsequent felony offense, and who has been adjudicated for three previous felony offenses, at least one of which involved the use or possession of a firearm or violence against a person. [s. 985.226(b), F.S.].

In all waiver hearings (except voluntary waiver hearings), the juvenile court judge makes the final determination of whether adult prosecution of a juvenile is warranted based on the facts and circumstances surrounding the offense.

(3) DIRECT FILE - This is a procedure whereby, pursuant to specific statutory criteria, the state attorney is authorized to file an information (a formal charging document) against a juvenile offender which directly transfers the case to adult court. There are two types of "direct files."

The first type of direct file is a *discretionary direct file*. The state attorney has the discretion to file an information on a juvenile offender 14 or 15 years of age who is charged with one of the following offenses:

- arson
- sexual battery
- robbery
- kidnaping
- aggravated child abuse
- aggravated assault
- aggravated stalking
- murder
- manslaughter
- throwing, placing or discharging a destructive device or bomb
- armed burglary in violation of s. 810.02(2)(b)
- burglary of a dwelling in violation of s. 810.01(2)(c)
- aggravated battery
- lewd or lascivious assault or act in the presence of a child
- carrying, displaying, using, threatening or attempting to use a weapon or firearm during the commission of a felony, or
- grand theft in violation of s. 812.014(2)(a) [s. 985.227(1)(a)].

Neither attempts to commit, nor conspiracies to commit, any of these above listed felonies qualifies for discretionary direct file criteria.

The state attorney also has the discretion to file an information on a juvenile offender who is 16 or 17 years of age for any felony offense. Also, if the juvenile offender has two previous adjudications or adjudications withheld for delinquent acts, at least one of which was a felony, the state attorney may direct file the juvenile offender to adult court for a misdemeanor offense. [s. 985.227(1)(b), F.S.].

The second type of direct file is a *mandatory direct file*. The state attorney must file an information if a juvenile offender is 16 or 17 years-of-age and is currently charged with a second or subsequent violent crime against a person, and the juvenile offender has a previous adjudication for murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery, or aggravated assault. [s. 985.227(2)(a), F.S.]. The state attorney is also required to direct file a juvenile offender, regardless of age, if the juvenile has previously been adjudicated three or more times for felony offenses and three of the adjudications resulted in placement in a residential commitment facility [s. 985.227(2)(b), F.S.]. Lastly, the state attorney must direct file a juvenile offender, regardless of age, if the juvenile is charged with an offense involving theft of a motor vehicle and while driving the motor vehicle caused the death or serious bodily injury to a person. [s. 985.227(2)(c), F.S.].

**Adult Sentences For Juvenile Offenders Prosecuted as Adults** Currently under Florida law, the only instance which requires the imposition of adult sanctions for juvenile offenders prosecuted as adult, are those cases in which the offender is indicted for a capital offense or offense punishable by life, and the offender is found to have committed the offense for which he or she was indicted. [s. 985.225(3), F.S.; s. 985.233(4), F.S.]. For example, if a 16 year old juvenile is indicted for first degree (premeditated) murder and is found guilty by a jury of second degree murder, the law does not require the imposition of an adult sentence for second degree murder because it was not the offense for which the juvenile was indicted. This is true even though second degree murder itself is an offense punishable by life. On the other hand, if the same offender had been indicted on second degree murder and found guilty of second degree murder, an adult sentence would have been mandatory.

In all other instances, juveniles prosecuted as adults can receive either an adult sentence or a juvenile sentence. [s. 985.233, F.S.]. Adult court judges are currently prohibited from sentencing a juvenile offender charged as an adult to a combination of juvenile sanctions and adult sanctions. [s. 985.233(4)(b), F.S.]. As a result, the judge must decide whether to impose exclusively adult court sanctions (which includes a youthful offender option discussed later), or juvenile sanctions.

When a juvenile is sentenced as an adult, the range of sentencing options available for an adult court judge will vary depending on the offense or offenses the juvenile offender is to be sentenced for.

#### A. The Criminal Punishment Code

All non-capital felony offenders in adult court are subject to the Florida Criminal Punishment Code (hereinafter "The Code") for offenses committed on or after October 1, 1998. [s. 921.002 - 921.0026, F.S.]. The Code establishes a "floor" or minimum sentence that a court may impose for the offenses before it, unless a reason for a more lenient sentence (a "downward departure sentence") is authorized by statute. This minimum sentence is called the "lowest permissible sentence." The Code also provides the court with the discretion to impose a prison sentence up to the maximum allowed by statute for each offense.

One of the statutorily articulated principles of the Code is that the penalty imposed be commensurate with the severity of the primary offense and the circumstances

surrounding it. [s. 921.002(1)(c), F.S.]. In keeping with that principal, the Code incorporates an offense severity ranking chart. "The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense." [s. 921.0022(2), F.S.].

The Code utilizes a worksheet for purposes of determining an offender's "lowest permissible sentence." [921.0024, F.S.]. In determining the lowest permissible sentence, points are scored for the primary offense before the court, additional offenses before the court, the extent of the victim's injury, the offender's prior record, and a number of other specified circumstances.

Illustrating a couple of examples is perhaps best way to demonstrate the application of the Code.

Example 1. A juvenile offender is transferred to adult court on a charge of Burglary of an Occupied Structure, a second degree felony. The juvenile has a prior record consisting of two prior car burglaries (unoccupied and unarmed), grand theft of a motor vehicle, and two petit thefts. Under the Code, this offender would not score a minimum sentence which would require the court to sentence the offender to prison. This type of sentence is called a "non-state prison" sanction, and in this example it is the lowest permissible sentence authorized by the Code. On the other hand, the court in this circumstance would have the discretion to sentence this offender to prison for a period of up to 15 years.

Example 2. A juvenile is transferred to adult court on a charge of Robbery with a Firearm, a first degree felony punishable by life imprisonment. The juvenile has a prior aggravated assault with a deadly weapon, and a prior grand theft. Under the Code this offender would score a minimum sentence of approximately 56.5 months in state prison. In addition, the court would have the discretion to sentence this offender to prison for a period of up to life imprisonment.

Despite the "lowest permissible sentence" prescribed by the Code, the court may still sentence an offender to less than the lowest permissible sentence provided there are certain statutory mitigating factors present which reasonably justify a more lenient "downward departure" sentence. Section 921.0026(2), F.S. provides:

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.

(c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.

(d) The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.

(e) The need for payment of restitution to the victim outweighs the need for a prison sentence.

(f) The victim was an initiator, willing participant, aggressor, or provoker of the incident.

(g) The defendant acted under extreme duress or under the domination of another person.

(h) Before the identity of the defendant was determined, the victim was substantially compensated.

(i) The defendant cooperated with the state to resolve the current offense or any other offense.

(j) The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.

(k) At the time of the offense the defendant was too young to appreciate the consequences of the offense.

(l) The defendant is to be sentenced as a youthful offender.

For those offenders who qualify for a non-state prison sanction under the Code, the sentence can include a period of incarceration of up to one year in the county jail followed by a form of community supervision for a period of years. Alternatively, a non-state prison sanction can consist entirely of community supervision. Community supervision can be either in the form of community control (stricter supervision) or probation, both of which are monitored by the Department of Corrections. During the period of community control or probation, the offender would have to report to his correctional probation officer on a regular basis, and comply with specific conditions.

## B. Youthful Offenders

A large number of juvenile offenders transferred to adult court qualify for a youthful offender sentence notwithstanding the Code. [s. 958.04(2), F.S.].

### 1. Imposition of Youthful Offender Sanctions by the Courts -

Under s. 958.04, the court may sentence a juvenile transferred to adult court as a youthful offender if the offender has not previously been classified as a youthful offender and who has not been found guilty of a capital or life felony. (Both of the offenders in the examples given previously would qualify for a youthful offender sentence.) As a youthful offender a court may either adjudicate the offender guilty or withhold adjudication of guilt. The total length of time a youthful offender sentence may last is six years (unless the offense is a third degree felony in which case the sentence can be for

no more than five years). A youthful offender may be sentenced entirely to probation or community control. In addition, as a condition of probation or community control a youthful offender may be incarcerated for up to 364 days in a county facility, or a Department of Corrections probation and restitution center, or a community residential facility. [s. 958.04(2)(b), F.S.]. A youthful offender sentence can also be a split sentence where the offender is sentenced to probation or community control upon completion of a period of incarceration between 1 to 4 years. The maximum youthful offender sentence is 4 years incarceration followed by 2 years of community control. [s. 985.04(2)(c), F.S.].

## 2. Designation of Youthful Offenders by the Department of Corrections -

Florida law also authorizes the Department of Corrections to designate inmates as youthful offenders if they meet the criteria set forth in s. 958.04, F.S., and if they are eligible for control release pursuant to s.947.146, F.S. [s.958.045(8), F.S.]. Consistent with this provision, the Department of Corrections may classify a qualifying inmate as a youthful offender if the inmate is either 24 years old or less and is serving a sentence of ten years or less, or 19 years old or less and safety concerns require placement in a youthful offender facility. [s. 958.11(6), F.S.].

## 3. The Basic Training Program

Under s. 958. 045, F.S., the Department of Corrections must develop and implement a basic training program for youthful offenders. The basic training program must be at least 120 days in duration. The program includes marching drills, manual labor assignments, physical training, personal and general education development, basic education courses, and rehabilitation programs.

The Department of Corrections is required to screen all youthful offenders for suitability into the basic training program. If an offender meets the criteria, and space is available, the Department must request that the sentencing court give approval for the offender to participate in the program. If approval is granted and the offender satisfactorily completes the program, the court must modify the sentence imposed and place the offender on probation. [s. 958.045(5)(c), F.S.].

Through the basic training program a youthful offender can reduce a ten-year prison sentence (having it converted to probation) by completing the 120-day program.

**Firearms Possession** Currently in the adult system, s. 790.23, F.S., makes it a second degree felony for an adult convicted of a felony to possess a firearm. Unless and until a convicted felon petitions for and has his or her civil rights restored, they may never lawfully possess a firearm. [s. 940.03, F.S., and s. 940.04, F.S.]. Current law also prohibits juveniles who have been adjudicated delinquent for a felony level offense from possessing firearms. Unlike adults, however, the prohibition for juveniles from possessing firearms no longer applies when the jurisdiction of the juvenile court expires.

**Violations of Aftercare Supervision** Currently, s. 985.231, F.S., requires violations of the aftercare component of a commitment program to be treated in the same manner as violations of community control. The effect of this treatment is to require the state attorney to file a petition alleging a violation of supervision. If the youth denies violating

supervision the court must conduct a hearing. If the youth is found to be in violation, the court must enter a new disposition order. It not clear under the current law if aftercare is to be treated as an extension of a youth's commitment status. Assuming that aftercare is to be treated as an extension of a commitment status, the DJJ could conduct an administrative transfer hearing for youth who violate the conditions of aftercare, without the need for state attorney and court involvement.

### **Juvenile Justice Boot Camp Programs**

Boot camps were created to provide a highly disciplined educational setting, physical training and rehabilitation for qualifying youth. Currently, under s. 985.309, F.S., the minimum criteria for participation in a juvenile justice boot camp program is that the youth be at least 14 years of age, and committed to the DJJ for an offense other than a capital, life or violent first degree felony.

The first boot camp was started in 1993 in Manatee County. Currently there are eight boot camps operating in Florida. They are located in Bay, Collier, Leon, Manatee, Martin, Pinellas, Polk and Orange counties. There are two other boot camp style programs in operation, the Youth Development Academy in Hendry County and the Forestry Youth Academy in Levy County. (Juvenile Justice Advisory Board 1998 Annual Report and Juvenile Justice Fact Book).

The DJJ, counties or municipalities operating boot camps screen each youth to determine eligibility for admission. Those youth whose medical and psychological profiles appear conducive to successfully completing the program are accepted into the boot camp. Youth in any boot camp becoming unmanageable, or medically or psychologically ineligible are removed from the program. [s. 985.309 (10), F.S.].

Youth committed to low-risk residential programs spend at least two months in a boot camp component and two months in aftercare. Youth committed to moderate-risk residential programs spend at least four months in a boot camp component and four months in aftercare. [s. 985.309, F.S.]. The average length of stay is six to eight months in the residential component. Approximately 30 youth are committed to each boot camp program.

Program designs consist of several basic components:

- marching drills
- calisthenics
- rigid dress code
- physical training
- manual labor
- general education
- vocational training
- substance abuse program
- rehabilitation training
- decision making and personal development
- values counseling

Several boot camps use a transitional component for intensive pre-release planning and preparation. Boot camps also use an aftercare component.

Subsections (7) through (9) of s. 985.309, Florida Statutes, directs the DJJ to adopt rules for county, municipal or state operated boot camp programs. The rules provide disciplinary sanctions and restrictions for youth in the program. The DJJ records and monitors the criminal activity, educational progress and employment placement of all youth committed to a boot camp program. The DJJ must publish an outcome evaluation study of each boot camp program within 18 months after the fourth platoon is graduated. [s. 985.309, F.S.].

**Determining Recidivism** The tendency of a criminal offender to repeat criminal behavior is known as *recidivism*. Recidivism is the single most important factor in measuring the success or failure of criminal justice, juvenile justice and crime prevention programs. Currently, however, there is no statutory definition of recidivism by which juvenile justice programs are evaluated.

In order to keep the Legislature apprised of the success or failure of juvenile justice programs s. 985.412(1)(a), F.S., provides:

(1)(a) It is the intent of the Legislature to:

1. Ensure that information be provided to decision makers so that resources are allocated to programs of the department which achieve desired performance levels.
2. Provide information about the cost of such programs and their differential effectiveness so that the quality of such programs can be compared and improvements made continually.
3. Provide information to aid in developing related policy issues and concerns.
4. Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.
5. Provide a basis for a system of accountability so that each client is afforded the best programs to meet his or her needs.
6. Improve service delivery to clients.
7. Modify or eliminate activities that are not effective.

In keeping with this intent the DJJ consults with the Juvenile Justice Advisory Board (JJAB) and providers to develop a cost-benefit model and apply the model to each commitment program. [s. 985.404(11), F.S.]. In addition, in evaluating program effectiveness both the DJJ and the JJAB are required to utilize operational definitions and common terminology in their respective reports to the Legislature. [s. 985.401(4), F.S., and 985.412 , F.S.].

In 1998, for purposes of evaluating program effectiveness, the JJAB, the DJJ, and other stakeholders, agreed to define recidivism as adjudication as a juvenile or as an adult for an offense committed within one year of release from a DJJ commitment program. Up until this time overall recidivism was defined as recommitment to the DJJ or placement on probation or in a Department of Corrections facility. (1998 Annual Report and Juvenile Justice Fact Book).

In the 1998 Annual Report and Juvenile Justice Fact Book, the JJAB explains the rationale for the definition as follows: "this method gives a more valid picture of whether the program successful in changing the **actual behavior** of the individual" (emphasis added).

In its Recidivism Report For Commitment Programs (FY 1996-97), the DJJ made a similar rationalization for its emphasis on measuring recidivism from the point of adjudication ( or adjudications withheld):

Subsequent referrals or arrests indicate that a youth has been charged with another offense, but a subsequent referrals/arrests were not necessarily evidence that the released youth committed the offense charged. . . . An adjudication (including adjudications withheld) or a conviction provides a more solid measure of subsequent criminal involvement. Such a finding by a court is a clearer indication that the youth was found to have committed the offense.

The fact remains, however, that the use of actual adjudications (or adjudications withheld) imposed as a gauge to measure recidivism is imprecise, particularly when one is measuring a *rate of recidivism*, rather than *individual recidivism*. Legal fictions aside, the fact that there is not a sentenced imposed in a given case, does not mean the offender did not commit the crime. There are a number of reasons why a juvenile who actually committed a crime and was arrested for it, would, nevertheless, not be sentenced for it. A case could have been dropped as part of a plea negotiation in another case, or sometimes a case is not prosecuted, or a case is dismissed. In any event, a case can result in having neither an adjudication, nor an adjudication withheld, for reasons which have nothing to do with the fact the offender actually repeated his criminal behavior. Counting only those cases which result in an actual sentence (regardless of the status of adjudication) yields recidivist data which may be artificially low, and may count as "successes" those individuals who, in fact, are still committing crimes. In fact, any measure of recidivism is likely to underestimate the true rate of recidivism because many criminal acts are either not reported, or if reported, the act may not result in an arrest.

**Parental Responsibility** Currently, under s. 985.319(6), F.S., If a parent or guardian of a juvenile fails to obey a summons to appear in court, the court may order the parent or guardian taken into custody immediately to show cause why the parent or guardian should not be held in contempt of court.

B. EFFECT OF PROPOSED CHANGES:

**Impeachment of Witnesses** Section 1 of HB 205 allows a witness in a trial to have his or her credibility impeached through the use of adjudications of delinquency to the same extent as currently allowed for adult convictions. The use of adjudications of delinquency for these purposes would not apply to any witness 24 years of age or older.

**Prior Juvenile Record in Adult Sentencing** Section 2 of the bill removes the current 3 year limitation on the use of adjudications of delinquency as part of an adult offender's prior record for purposes of calculating an offender's "lowest permissible sentence" under the Code. Under the bill, offenses committed as a juvenile would be counted as part of an adult offender's prior record to the same extent as currently provided for adult offenses.

**Confidential Juvenile Record Information** Section 5 of the bill removes the confidential status of juvenile records which show offenses charged and how those offenses were resolved and makes them public records. All other juvenile records which are presently confidential, such as evaluations and treatment records, would remain protected.

**Court Records** For adult offenders being sentenced for a felony committed before reaching age 24, section 7 of the bill requires the clerk of the court to merge the offender's juvenile record with his or her adult record.

**Transferring Juvenile Offenders to Adult Court** This section of the analysis will discuss the changes the bill proposes to mandatory waiver hearing criteria. The discussion will then turn to the bill's provisions concerning mandatory and discretionary direct file criteria.

With regard to *mandatory waiver* hearing criteria, section 13 of HB 205 adds attempts to commit, and conspiracies to commit, any of the qualifying previous violent felonies to the offenses listed in the mandatory waiver hearing criteria set forth in s. 985.226(2), F.S. In addition, the offense of "burglary with an assault or battery" is added to the list of qualifying previous violent felonies.

With regard to *mandatory direct file* criteria, section 14 of the bill also adds attempts to commit, and conspiracies to commit, any of the qualifying previous violent felonies to the offenses listed in the mandatory direct file criteria set forth in s. 985.227(2), F.S.

Section 14 eliminates an existing direct file criteria, which applies to juveniles of any age, that requires the state attorney to file an information in adult court if the juvenile has at least three previous separate felony adjudications of delinquency each of which resulted in a commitment to a residential program. In its place a new criteria is provided, for offenders 16 and 17 years of age, which requires the state attorney to direct file an information for a felony or misdemeanor offense if the offender has three previous felony adjudications or adjudications withheld, or if the offender has previous adjudications or adjudications withheld for six misdemeanors or any combination of felony or misdemeanor offenses. Each of these offenses must be separated in time by 45 days or more.

With regard to *discretionary direct file* criteria, section 14 of the bill adds attempts to commit, and conspiracies to commit, any of the qualifying violent felonies to the offenses listed in the discretionary direct file criteria set forth in s. 985.227(1), F.S. In addition, the offenses of burglary with an assault or battery, car jacking, and home invasion robbery, are added to the list of violent felonies qualifying for discretionary direct filing.

The bill also clarifies the procedure for addressing juvenile cases which are pending at the time a case is transferred to the adult court. The bill requires pending juvenile felony cases to be transferred to the adult court for further prosecution. In the event the juvenile is acquitted of the original transferred case, the remaining pending cases are subject to juvenile sanctions only. Juvenile sanctions for these remaining pending cases could be imposed by the adult court, or these cases could be transferred back to the juvenile court for disposition.

**Firearms Possession** Section 15 of the bill prohibits persons who have been adjudicated delinquent for a felony offense from possessing firearms until they reach age 24.

**Violations of Aftercare Supervision** Section 17 of the bill eliminates the requirement on the State Attorney to file a petition alleging violations of aftercare supervision. Without this requirement, the DJJ could, through an administrative hearing, transfer a juvenile who violates the aftercare component of a commitment program out of aftercare supervision and back into the residential component of the commitment program.

**Adult Sentences For Juvenile Offenders Prosecuted as Adult** Section 18 of HB 205 requires the imposition of adult sanctions in certain circumstances where the prosecution of the juvenile in adult court is statutorily mandated.

For juvenile offenders ages 14 and older, transferred to adult court pursuant to a mandatory waiver hearing, the specific circumstances which would require the imposition of an adult sentence are as follows:

1. Juveniles who at the time of the commission of a fourth or subsequent felony offense had previously been found to have committed three felonies at least one of which involved the use or possession of a firearm or the use of violence against a person.
2. Juveniles who have been previously adjudicated delinquent for the commission of, attempt to commit or conspiracy to commit, murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery and who have been found to have committed a second or subsequent violent crime against a person.

For juvenile offenders ages 16 and 17 who are direct filed to adult court, the specific circumstances which would require the imposition of an adult sentence are as follows:

1. Juveniles who have been previously adjudicated delinquent for the commission of, attempt to commit or conspiracy to commit, murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery,

or aggravated assault and who have been found to have committed a second or subsequent violent crime against a person.

2. Pursuant to the new criteria proposed in section 14 of the bill, juveniles who have been previously adjudicated delinquent for three felonies or six misdemeanors or any combination of six felony or misdemeanor offenses, which are separated in time from each other by 45 days or more.

For those instances where a juvenile is transferred to adult court as a matter of discretion, section 18 of HB 205 creates a new sentencing option for adult court judges. For these juveniles, a judge may withhold adjudication of guilt as an adult, and place the offender in a residential commitment program of the DJJ, followed a minimum of one year of aftercare or postcommitment community control. If an offender sentenced under this provision is found to have violated the conditions of commitment, aftercare or postcommitment community control, the adult court judge would be required to impose adult sanctions.

**Juvenile Justice Boot Camp Programs** - Section 20 of the bill expands the eligibility for juvenile boot camp programs to include juveniles 14 years of age and older who have not pled to, or been adjudicated of, a violent first degree felony or higher. The bill also authorizes the DJJ, counties or municipalities to create short term boot camps called "early intervention boot camps for younger juveniles. Under this new form of boot camp, youths 12 years of age or older who had not pled to, or been adjudicated of, a violent first degree felony or higher would be eligible to participate provided they did not have more than two prior felony cases, or more than four misdemeanor cases.

**Determining Recidivism** For purposes of DJJ's cost-effectiveness report submitted to the Legislature under s. 985.404(11), section 22 of the bill requires the report to consider recidivism rates for commitment and community supervision programs. For commitment programs, the rate of recidivism must be measured by whether a juvenile has been arrested within 18 months of leaving a commitment program. For community control, furlough and aftercare programs, the rate of recidivism must be measured by whether a juvenile has been arrested within 1 year after leaving supervision.

**Parental Responsibility** Under section 23 of the bill, any parent or guardian who fails to produce a juvenile for a properly noticed court appearance, may be assessed a \$100 civil penalty in addition to any other penalty imposed.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

The DJJ.

- (2) Who makes the decisions?

The State Attorney in determining how to proceed with prosecution of the offense, the DJJ in making recommendations to the State Attorney and to the court. And the DJJ when determining which program would best suit the offender's needs if the youth is committed to the DJJ for disposition.

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

Section 985.231(1)(e), F.S., authorizes a court to order the natural parents or legal custodian or guardian of a youth who is found to have committed a delinquent act to participate in family counseling and other professional counseling activities deemed necessary for the rehabilitation of the youth or to enhance their ability to provide the youth with adequate support, guidance, and supervision.

- (5) Are families penalized for not participating in a program?

The court may use its contempt power to enforce a court-imposed sanction.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

Yes.

**D. STATUTE(S) AFFECTED:**

See the Section-by Section Analysis (Section E) below.

**E. SECTION-BY-SECTION ANALYSIS:**

**Section 1.** Amending s. 90.610, F.S., regarding the use of adjudications of delinquency for impeachment purposes.

**Section 2.** Amending s. 921.0021, F.S., regarding including juvenile offenses as “prior record” for adult sentencing purposes.

**Section 3.** Amending s. 943.0515, F.S., regarding retention of criminal history records.

**Section 4.** Amending s. 985.03, F.S., defining “violation of supervision.”

**Section 5.** Amending s. 985.04, F.S., regarding confidentiality of records of juvenile offenses.

**Section 6.** Reenacting paragraph (k) of subsection (4) of s. 985.31, F.S., for the purpose of incorporating the amendment to s. 985.04, F.S.

**Section 7.** Amending s. 985.05, F.S., regarding confidentiality and maintenance of juvenile records.

**Section 8.** Amending s. 985.201, F.S., correcting an erroneous cross-reference.

**Section 9.** Amending s. 985.21, F.S., regarding interagency agreements concerning DJJ recommendations.

**Section 10.** Amending s. 985.211, F.S., regarding reports of youth taken into custody.

**Section 11.** Amending s. 985.225, F.S., regarding pending cases for youth subsequently indicted.

**Section 12.** Repealing subsection (6) of s. 985.218, F.S., regarding speedy trial for adjudicatory hearings.

**Section 13.** Amending s. 985.226, F.S., regarding criteria for waiver of juvenile court jurisdiction.

**Section 14.** Amending s. 985.227, F.S., regarding criteria for the direct filing of criminal charges on a juvenile for prosecution as an adult.

**Section 15.** Amending s. 985.228, F.S., regarding possession of firearms by persons adjudicated delinquent.

**Section 16.** Amending s. 790.23, F.S., regarding possessions of firearms by persons adjudicated delinquent.

**Section 17.** Amending s. 985.231, F.S., regarding violations of aftercare supervision.

**Section 18.** Amending s. 985.233, F.S., regarding sentencing alternatives for juveniles prosecuted as adult.

**Section 19.** Reenacting of subdivisions of ss. 985.225, and 985.31, F.S., for the purpose of incorporating the amendment to s. 985.233, F.S.

**Section 20.** Amending s. 985.309, F.S., regarding boot camps for children.

**Section 21.** Reenacting of subdivisions of ss. 985.231, 985.31, 985.311, and 985.314, F.S., for the purpose of incorporating the amendment to s. 985.309, F.S.

**Section 22.** Amending s. 985.404, F.S., regarding the development of a cost-benefit model ranking commitment programs and reporting requirements

**Section 23.** Amending s. 985.219, F.S., regarding process and service related to court appearances for juveniles.

**Section 24.** Providing an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects:</u>	FY 99-00	FY 00-01	FY 01-02
DJJ	\$8,500,000	-	-
2. <u>Recurring Effects:</u>			
DJJ	\$4,839,900	\$4,839,900	\$4,839,900
3. <u>Long Run Effects Other Than Normal Growth:</u>			
N/A			
4. <u>Total Revenues and Expenditures:</u>			
DJJ	\$13,339,900	\$4,839,900	\$4,839,900

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The adult sentencing provisions of this bill have both positive and negative fiscal consequences. Due to provisions of this bill which require adult sanctions for certain juvenile offenders, and due to a new proposed transfer provision, there will be an increase in the number of juvenile offenders transferred to adult, and a reduction in the number of transferred juveniles who could potentially be returned to the juvenile system. Last year there were 4,660 youth transferred to adult court. Under current law, nearly **all** them could potentially come back to the juvenile justice system and return to the DJJ. Under HB 205, only a **portion** of those juveniles transferred to adult could potentially return to the DJJ, because Section 18 of the bill prohibits juvenile sanctions for certain juvenile offenders.

**Impact on the Department of Juvenile Justice**

The DJJ examined Section 18 in order to estimate the reduction in transferred youth who would be eligible to return to the DJJ. The DJJ used data collected by the Department of Corrections to project a number representing that portion of the 4660 transferred youth who would be eligible to be sentenced back to the DJJ. This number was then compared to those youth who would be the least likely to be returned. Projections of offenders least likely to return to the DJJ were determined based on the seriousness of

the presenting offense, and sentencing patterns which indicated that the court had long terms plans to keep the offender in the adult system.

The result of the projection was that the operation of the new transfer and adult sentencing provisions would create a bed surplus of 568. The creation of a new sentencing alternative in Section 18 which allows an adult court judge to impose an adult sanction while committing the juvenile to the DJJ would, however, require 795 commitment program "slots". Subtracting the 568 surplus beds from the 795 projected slots, shows a need to increase bed capacity to service an additional 227 slots. The 227 slots translates to an additional 170 beds needed. The DJJ calculated the cost of funding the new beds based on the construction and operation of "high risk" residential facilities. Funding for 170 high risk beds would require \$4,839,900 (170 beds X \$78 per day X 365 days) in recurring cost per year. Construction of new facilities to meet the need would cost \$8,500,000 in non-recurring fixed capital outlay.

**Impact on the Department of Corrections**

As of this date, the Criminal Justice Estimating Conference has not yet determined the fiscal impact of this bill. The Department of Corrections has not completed its estimate of the bill's fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

**STORAGE NAME:** h0205.jj

**DATE:** February 16, 1999

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VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Staff Director:

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David M. De La Paz

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David De La Paz