

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1670

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Latvala

SUBJECT: Juvenile Justice

DATE: April 25, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sadberry</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1670 makes numerous changes that increase the use of secure detention.

Specifically, the bill:

- Creates the designation of a “prolific juvenile offender;”
- Requires that children who meet the criteria for the designation of “prolific juvenile offender” be held in detention until disposition;
- Requires the court to place a child who is adjudicated and awaiting placement in a commitment program in secure detention until the child is placed in a commitment program;
- Requires that the period for detention be tolled on the date the Department of Juvenile Justice (DJJ) alleges the child has violated a condition of his or her detention until the court enters a ruling on the violation;
- Requires a “prolific juvenile offender’s” adjudicatory hearing be held within 45 days after the child is taken into custody;
- Waives the fees the Department of Health charges for certified birth certificates for juvenile offenders in the custody of the Department of Juvenile Justice;
- Creates an exception to allow a person who has an adjudication of delinquency for a felony offense and has his or her criminal history record expunged pursuant to s. 943.0515(1)(b), F.S., to qualify to lawfully possess a firearm; and
- Specifies that the bill fulfills an important state interest.

The bill appropriates for Fiscal Year 2017-2018 of \$2,978,012 in recurring funds and \$2,978,012 in nonrecurring funds from the General Revenue Fund to the Department of Juvenile Justice (DJJ).

The bill is effective October 1, 2017.

## **II. Present Situation:**

### **Detention of Juveniles**

The Department of Juvenile Justice (DJJ) provides detention care to supervise juveniles charged with committing a crime or who are held pursuant to a court order. There are two types of detention care, secure and nonsecure detention. Secure detention is the temporary custody of a child while under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.<sup>1</sup>

Nonsecure detention is the temporary, nonsecure custody of a child while the child is released to the custody of the parent, guardian, or custodian under the supervision of the DJJ staff pending adjudication, disposition, or placement. There are numerous forms of nonsecure detention; they include home detention, electronic monitoring, and nonsecure shelters.<sup>2</sup>

The DJJ operates 21 secure detention facilities with 1,302 beds in 21 counties. During Fiscal Year 2015-16, a total of 15,142 children were served through secure detention, 11,463 were served through home detention, and 2,803 were served through electronic monitoring. There are three county-operated detention centers in Marion, Polk, and Seminole counties.<sup>3</sup>

During Fiscal Year 2015-16, 2,437 children were committed to nonsecure residential commitment programs. These committed children awaiting placement in the community committed 4,308 new charges, including felonies, misdemeanors, and technical offenses. For that same period, 149 committed youth awaiting placement absconded during their time pending placement.<sup>4</sup>

### **Pre-Adjudication Detention**

Section 985.255, F.S., requires a child to have a detention hearing within 24 hours of being taken into custody and placed in detention. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention.<sup>5</sup>

During the period of time between when a child is taken into custody and the detention hearing, the DJJ makes the determination of whether a child should be placed in detention. The DJJ must

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<sup>1</sup> Section 985.03(18), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Department of Juvenile Justice, *2017 Agency Bill Analysis for SB 1670*, March 10, 2017, (on file with the Senate Criminal Justice Committee).

<sup>4</sup> *Id.*

<sup>5</sup> Section 985.255(3)(a), F.S.

make its decision on a risk assessment of the child.<sup>6</sup> The child must be placed in secure detention until the detention hearing if the child:

- Is charged with possessing or discharging a firearm on school property.
- Has been taken into custody on three or more separate occasions within a 60-day period.<sup>7</sup>

Section 985.24, F.S., requires that all determinations and court orders regarding the use of detention care must be based upon findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court by:
  - Intentionally disrupting the administration of the court;
  - Intentionally disobeying a court order; or
  - Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or
- Requests protection from imminent bodily harm.<sup>8</sup>

At a detention hearing, the court must determine the need for continued detention and use the results of the DJJ's risk assessment.<sup>9</sup> The court may order a child to stay in detention, if the child is:

- Alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- Wanted in another jurisdiction for a felony offense.
- Charged with a delinquent act or violation of law and requests to be detained for protection from an imminent physical threat to his or her personal safety.
- Charged with committing an offense of domestic violence<sup>10</sup> and is detained.<sup>11</sup>
- Charged with possession of or discharging a firearm on school property or the illegal possession of a firearm.

<sup>6</sup> A risk assessment must take into consideration the child's prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. Section 985.245(2), F.S.

<sup>7</sup> Section 985.25, F.S.

<sup>8</sup> Section 985.24(1), F.S.

<sup>9</sup> Section 985.255(3)(a), F.S., provides that a court does not have to use the DJJ's risk assessment in making its determination of detention if the child is detained because he or she is charged with a domestic violence offense, possession of or discharging a firearm on school property, or the illegal possession of a firearm.

<sup>10</sup> Section 741.28(2), F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. A family or household member includes: spouses; former spouses; persons related by blood or marriage; persons who are presently residing together as if a family or who have resided together in the past as if a family in the same single family dwelling unit; and persons who are parents of a child in common, regardless of whether they have been married.

<sup>11</sup> Section 985.255(2), F.S., allows a child to be held in secure detention if the court finds that respite care is not available and it is necessary to place the child in secure detention to protect the victim from injury.

- Charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., (drug offenses) or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.
- Charged with any second degree or third degree felony involving a violation of ch. 893, F.S., 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;
  - Has a record of law violations prior to court hearings;
  - Has already been detained or has been released and is awaiting final disposition of the case;
  - Has a record of violent conduct resulting in physical injury to others; or
  - Is found to have been in possession of a firearm.
- Alleged to have violated the conditions of the child's probation or conditional release supervision.
- Detained on a judicial order for failure to appear and has previously willfully failed to appear:
  - For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
  - At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.<sup>12</sup>

If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court must state, in writing, clear and convincing reasons for such placement.<sup>13</sup>

### **Length of Detention**

Once a detention hearing has been held and the state has filed a petition alleging a child committed a delinquent act or a violation of law, an adjudicatory hearing must be held as soon as practicable.<sup>14</sup> A child cannot be held in detention for more than 21 days unless an adjudicatory hearing is held.<sup>15</sup> The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare for cases involving certain serious crimes.<sup>16</sup> Except as stated above, after the adjudicatory hearing, a child cannot be held in detention for more than 15 days.<sup>17</sup>

### **Post-Disposition Detention**

After the court finds that a child has committed a delinquent act, it must conduct a disposition hearing to determine the appropriate sanction for the child.<sup>18</sup> If the court places a child in a

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<sup>12</sup> Section 985.255(1), F.S.

<sup>13</sup> Section 985.255(3)(b), F.S.

<sup>14</sup> Section 985.35(1), F.S.

<sup>15</sup> Section 985.26(2), F.S.

<sup>16</sup> These serious crimes include capital felonies, life felonies, and first or second degree felonies. Section 985.26(2), F.S.

<sup>17</sup> Section 985.26(3), F.S.

<sup>18</sup> Section 985.433, F.S.

commitment program, the court must also place the child in detention care (secure or nonsecure) while awaiting placement in such commitment program.<sup>19</sup>

If the child is awaiting placement in a nonsecure residential program he or she can only be in secure or nonsecure detention for up to five days. The DJJ may seek an extension of the five-day period to hold the child in detention care until the commitment placement is made. However, if the child is in secure detention, the continued detention cannot exceed 15 days.<sup>20</sup>

A child who violates his or her nonsecure detention or nonsecure detention with electronic monitoring can be placed in secure detention for five days for the first and each subsequent violation.<sup>21</sup>

If the placement for the child is a high- or maximum-risk residential program, the child must be held in secure detention until the placement is made.<sup>22</sup>

### III. Effect of Proposed Changes:

#### Pre-Adjudication Detention

**Section 3** amends s. 985.255, F.S., to add to the criteria a court may consider at a detention hearing. The bill adds the criteria of whether the child is classified as a *prolific juvenile offender*.

A child is a *prolific juvenile offender* if the child:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the current charge; and
- Has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
  - An arrest event for which a disposition<sup>23</sup> has not been entered;
  - An adjudication; or
  - An adjudication withheld.

The term “arrest event” to mean an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction

The bill also specifies that court can only use the criteria in s. 985.255(1)-(2), F.S., and the risk assessment performed by the DJJ to determine whether a prolific juvenile offender should be held in secure detention.<sup>24</sup>

<sup>19</sup> Section 985.27, F.S.

<sup>20</sup> Section 985.27(1)(a), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 985.27(1)(b) and (c), F.S.

<sup>23</sup> The bill defines disposition to mean the entry of a nolle prosequi for the charges, a dismissal of the case, or the entry of a disposition order by the court.

<sup>24</sup> Section 985.255(2), F.S., allows a child who is charged with committing an offense that is also an act of domestic violence to be held in secure detention to protect the victim from injury.

Under current law, a child must be placed in secure detention until the detention hearing if he or she is charged with certain offenses. **Section 2** amends s. 985.25, F.S., to include a child who is designated as a prolific juvenile offender to this list.

### **Length of Detention**

**Section 4** amends s. 985.26, F.S., to require a prolific juvenile offender to be placed on nonsecure detention care with electronic monitoring or held in secure detention under a special detention order until the disposition of his or her case. If secure detention is ordered by the court, it may not exceed:

- 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or extended by the court; or
- 15 days after the entry of an order of adjudication.

The term “disposition” means a declination to file under s. 985.15(1)(h), F.S.; the entry of a nolle prosequi for the charges; the filing of an indictment under s. 985.56, F.S.; or an information under s. 985.557, F.S. (direct file); a dismissal of the case; or an order of final disposition by the court.

This section also establishes a tolling period for juveniles who have violated a condition of nonsecure detention until the court enters a ruling on the violation. A court retains jurisdiction over a child for a violation of a condition of nonsecure detention care during the tolling period. If the court finds that a child has violated his or her nonsecure detention care, the number of days that the child served in any type of detention before commission of the violation is excluded from the above time limits.

**Section 7** amends s. 985.35, F.S., relating to adjudicatory hearings, to require a prolific juvenile offender’s adjudicatory hearing be held within 45 days after the child is taken into custody, unless a delay is requested by the child. Currently, a person who has an adjudication of delinquency for a felony offense is disqualified from lawfully possessing a firearm until he or she is 24 years old. The bill creates an exception to this disqualification, allowing a person who has his or her criminal history record expunged pursuant to s. 943.0515(1)(b), F.S., to qualify to lawfully possess a firearm.

### **Post-Disposition Detention**

**Section 6** amends s. 985.27, F.S., to require that all children who are adjudicated and awaiting placement in a nonsecure, high-risk, or maximum-risk residential commitment program be held in secure detention until placement or commitment.

### **Fees for Certified Birth Certificates**

The Department of Health charges fees for a certified copy of a birth certificate. Currently, the department waives these fees for an inmate for is acquiring a state identification card before

release.<sup>25</sup> **Section 1** amends s. 382.0255, F.S., to waive these fees for a juvenile offender who is in the custody of the DJJ and is receiving services under 985.461, F.S., (transition to adulthood services).

### **Other**

**Sections 5 and 9** amend ss. 985.265 and 985.514, F.S., respectively, to remove the reference of “secure” and “nonsecure” detention. The bill makes this change to consistently use “detention” care throughout ch. 985, F.S.

**Section 8** provides the Legislature determines and declares that its act fulfills an important state interest.

**Sections 10-15** amend ss. 790.22, 985.115, 985.13, 985.245, 985.255, 985.275, and 985.319, F.S., respectively, to reenact provisions to incorporate changes made by the bill.

**Section 17** of the bill provides an appropriation for Fiscal Year 2017-2018 of \$2,978,012 in recurring funds and \$2,978,012 in nonrecurring funds from the General Revenue Fund to the DJJ.

**Section 18** of the bill provides the bill is effective October 1, 2017.

## **IV. Constitutional Issues:**

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

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated.” Because this bill requires counties to pay more for juvenile detention costs than what was previously required, the mandate’s provision of Art. VII, s. 18(a) of the Florida Constitution, appears to apply. However, the bill requires both the counties and the state to pay their respective share of the additional detention costs. Thus, the bill applies to all persons similarly situated, including the state and local governments. The bill includes a legislative finding that the bill fulfills an important state interest.

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

None.

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

None.

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<sup>25</sup> Section 382.0255(3), F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill provides that children who meet the criteria for the designation of prolific juvenile offender be held in detention until disposition. Based on Fiscal Year 2015-2016, the DJJ determined 371 youth would meet the definition of prolific juvenile offender. Based on this, the DJJ assumes it would serve 371 youth once and 185.5 (half) of these youth a second time, totaling 557 cases annually. The current average time to disposition for these youth is 71 days. The bill provides that the adjudicatory hearing of a prolific juvenile offender must be held within 45 days.

The DJJ estimates the total cost impact of this bill to be \$5,956,025. (\$2,978,013 would be recurring General Revenue (GR) and \$2,978,012 nonrecurring GR for Fiscal Year 2017-2018). Following Fiscal Year 2017-2018, the nonrecurring would be replaced by Shared County Detention Trust Funds based on a 50/50 split of costs as required by statute. In accordance with s. 985.6865, F.S., the DJJ bills counties for shared detention costs based on “total shared detention costs for the prior fiscal year.” As such, changes that affect detention costs in Fiscal Year 2017-2018 would not be billed to counties until Fiscal Year 2018-2019. For that reason, the DJJ would need nonrecurring GR to cover the county’s portion for year one costs.<sup>26</sup>

The cost to the Department of Health to waive the fees for certified copies of juveniles’ birth certificates is unknown at this time.

**VI. Technical Deficiencies:**

To address the constitutional mandates requirements, a finding that the bill fulfills an important state interest should be included in the bill.

**VII. Related Issues:**

None.

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<sup>26</sup> Email from Fred Schukecht, Chief of Staff, Department of Juvenile Justice, to Tim Sadberry, Staff Director, Senate Appropriations Subcommittee on Criminal and Civil Justice, (April 10, 2017) (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice).



**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 382.0255, 985.25, 985.255, 985.26, 985.265, 985.27, 985.35, and 985.514.

This bill reenacts the following sections of the Florida Statutes: 790.22, 985.115, 985.13, 985.245, 985.255, 985.275, and 985.319.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Appropriations on April 25, 2017:**

The committee substitute:

- Waives the fees the Department of Health charges for certified birth certificates for juvenile offenders in the custody of the DJJ.
- Allows a prolific juvenile offender to be placed on nonsecure detention with electronic monitoring or held in secure detention until the disposition of his or her case.
- Provides that an adjudicatory hearing must be held within 45 days after the child is taken into custody instead of after the petition is filed alleging that the child has committed a delinquent act.
- Removes the proposed changes to ss. 985.24 and 985.245, F.S.
- Creates an exception to allow a person who has an adjudication of delinquency for a felony offense and has his or her criminal history record expunged pursuant to s. 943.0515(1)(b), F.S., to qualify to lawfully possess a firearm.
- Specifies that the bill fulfills an important state interest.
- Provides an appropriation.

- B. **Amendments:**

None.