

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/SB 1552 (517024)

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

SUBJECT: Juvenile Justice

DATE: February 21, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</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>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1552 makes numerous changes relating to juvenile justice.

The bill makes the following changes, effective July 1, 2018:

- Removes the requirement that the proceeds from the “Invest in Children” license plate must be allocated based on each county’s proportionate share of the license plate annual use fee;
- Requires a prolific juvenile offender (PJO) who violates conditions of his or her nonsecure detention to be held in secure detention until a detention hearing is held; and
- Changes the minimum age in which a juvenile qualifies for transfer to adult court by discretionary direct file to 15 or 16 years of age (currently 14 or 15) if he or she is charged with an enumerated felony.

The bill also reenacts statutory authority (s. 985.672, F.S.) for the Department of Juvenile Justice (DJJ) to establish a direct-support organization (DSO) to provide assistance, funding, and support to assist the DJJ in furthering its goals. The bill removes a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted. The bill requires the secretary of DJJ to appoint members to the DSO’s board of directors according to the DSO’s bylaws.

The bill also makes the following changes, effective July 1, 2019:

- Revises the Detention Risk Assessment Instrument (DRAI) used to determine placement of a juvenile in detention care; and
- Replaces the term “nonsecure” with “supervised release” and makes conforming changes throughout ch. 985, F.S., to be consistent with terminology and operation of the revised DRAI.

The Criminal Justice Impact Conference has not reviewed this bill but its provisions related to juveniles transferred to the adult system will likely increase DJJ’s expenditures and reduce the Department of Corrections’ expenditures. See Section V. Fiscal Impact Statement.

II. Present Situation:

“Invest in Children” License Plates

Section 320.08058(11)(a), F.S., establishes that the Department of Highway Safety and Motor Vehicles (DHSMV) must develop an “Invest in Children” license plate that is approved by the DHSMV. In 2017, there were 10,260 “Invest in Children” license plates sold.¹

The proceeds of the license plate annual use fee² must be deposited into the Juvenile Crime Prevention and Early Intervention Trust Fund within the DJJ. Based on recommendations of the juvenile justice councils, the DHSMV must use the proceeds of the fee to fund programs and services that are designed to prevent juvenile delinquency. The DHSMV must allocate money within each county based on each county’s proportionate share of the annual use fee collected by the county.³

Proceeds from the annual use fee for the “Invest in Children” license plate assist in funding:

- After-school activities;
- Mentoring;
- Tutoring;
- Job internships;
- Youth summits;
- Learning to live violence-free;
- Parent-child relationship building;
- Summer camp scholarships;
- Recreational programs for girls and boys; and
- Substance abuse prevention.⁴

¹ Florida Department of Highway Safety and Motor Vehicles, *2017 Specialty License Plate Rankings*, available at <http://www.flhsmv.gov/specialtytags/tagssales.pdf> (last visited February 15, 2018).

² The annual use fee is \$20. See Florida Department of Highway Safety and Motor Vehicles, *Invest in Children*, available at http://www.flhsmv.gov/dmv/specialtytags/miscellaneous/invest_in_children.html (last visited February 14, 2018).

³ Section 320.08058(11)(b), F.S.

⁴ Florida Department of Juvenile Justice, *Invest in Children*, available at <http://www.djj.state.fl.us/get-involved/license-plate> (last visited February 14, 2018).

Juvenile Intake and Detention

When a juvenile is taken into custody by law enforcement or the court, the intake process begins, with the purpose of assessing the juvenile's needs and risks to determine the most appropriate treatment plan and setting for the juvenile.⁵ Each juvenile undergoes an individualized assessment that begins with the standardized DRAI.⁶

The DRAI must indicate whether detention care is warranted.⁷ Detention care is the temporary care of a child in secure or nonsecure detention, pending a court adjudication or disposition or execution of a court order.⁸

The DRAI must take into consideration, but need not be limited to:

- 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;
- Probation status at the time the child is taken into custody;
- Aggravating and mitigating circumstances;
- Targeting a narrower population of juveniles than s. 985.255, F.S.;⁹ and
- The juvenile's history of abuse and neglect.¹⁰

The DRAI must indicate whether the juvenile should be placed into secure or nonsecure detention care.¹¹ Secure detention is the temporary custody of the juvenile while the juvenile is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.¹²

Nonsecure detention is the temporary, nonsecure custody of the juvenile while the juvenile is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment while under the supervision of the DJJ staff pending adjudication, disposition, or placement.¹³ Forms of nonsecure detention include, but are not limited to:

- Home detention;
- Electronic monitoring;
- Day reporting centers;
- Evening reporting centers; and
- Nonsecure shelters.¹⁴

⁵ Section 985.14(2), F.S.

⁶ Section 985.14(3)(a), F.S.

⁷ Section 985.245(2)(b), F.S.

⁸ Section 985.03(18), F.S.

⁹ Section 985.255, F.S., provides for the continued detention for a juvenile who has committed a specific offense or is a repeat offender.

¹⁰ Section 985.245(2)(b), F.S.

¹¹ *Id.*

¹² Section 985.03(18)(a), F.S.

¹³ Section 985.03(18)(b), F.S.

¹⁴ Nonsecure detention may include other requirements imposed by the court. *See* s. 985.03(18)(b), F.S.

The DJJ must ensure that a DRAI establishing the juvenile's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court.¹⁵

A juvenile taken into custody and placed into detention care must be given a hearing within 24 hours after being taken into custody.¹⁶ The court may order continued detention status at the hearing if:

- The juvenile 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;
- The juvenile is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony;
- The juvenile is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety;
- The juvenile is charged with committing an offense of domestic violence;
- The juvenile is charged with possession of or discharging a firearm on school property or illegal possession of a firearm;
- The juvenile is 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., or a felony of the third degree that is also a crime of violence;
- The juvenile is alleged to have violated the conditions of the child's probation or conditional release supervision;
- The juvenile is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:
 - For an adjudicatory hearing on the same case regardless of the results of the DRAI; or
 - At two or more court hearings of any nature on the same case regardless of the results of the DRAI; or
- The juvenile is 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 juvenile:
 - Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
 - 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.¹⁷

While the initial decision as to the juvenile's placement into detention care is made by the DJJ and is based on the DRAI, a juvenile must be placed in secure detention until the detention hearing if the juvenile:

¹⁵ Section 985.145(1)(d), F.S.

¹⁶ Section 985.255(1), F.S.

¹⁷ Section 985.255(1)(a)-(i), F.S.

- Is classified as a PJO pursuant to s. 985.255(1)(j), F.S.;
- Is charged with possessing or discharging a firearm on school property in violation of s. 790.115, F.S.; or
- Has been taken into custody on three or more separate occasions within a 60-day period.¹⁸

A juvenile may not be placed into or held in detention care for longer than 24 hours unless the court determines there is a need for continued detention and subsequently makes a special detention order.¹⁹

A juvenile may not be held in detention care under a special detention order for more than 21 days unless:

- An adjudicatory hearing for the case has been commenced in good faith by the court;
- Good cause is shown that the nature of the charge requires additional time for the prosecution or defense of the case; or
- The juvenile is classified as a PJO.²⁰

Prolific Juvenile Offender

The PJO designation was established to apply to youth with excessively high recidivism.²¹ A juvenile is classified as a PJO if he or she:

- 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, prior to the charge for which they are currently appearing; and
- Has five or more of any of the following, three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
 - An arrest event²² for which a disposition²³ has not been entered;
 - An adjudication; or
 - An adjudication withheld.²⁴

A juvenile who has been classified as a PJO is treated differently for purposes of detention care while awaiting disposition. While awaiting disposition, a PJO must be placed on nonsecure detention care with electronic monitoring or in secure detention care under a special detention order.²⁵

If the court orders secure detention care, it must not exceed:

¹⁸ Section 985.25(1)(a)-(b), F.S.

¹⁹ Section 985.26(1), F.S.

²⁰ Section 985.26(2)(a)-(c), F.S.

²¹ Section 985.255(1)(j), F.S., was created in 2017 by ch. 2017-164, L.O.F.

²² “Arrest event” is an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction. Section 985.255(1)(j), F.S.

²³ “Disposition” is a declination to file under s. 985.15(1)(h), F.S.; the entry of 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.; a dismissal of the case; or an order of final disposition by the court. Section 985.26(2)(c), F.S.

²⁴ Section 985.255(1)(j), F.S.

²⁵ Section 985.26(2)(c), F.S.

- 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to s. 985.26(2)(b), F.S.;²⁶ or
- 15 days after the entry of an order of adjudication.²⁷

Transferring of a Juvenile to Adult Court

There are three methods of transferring a juvenile to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing an information.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. To transfer a juvenile pursuant to judicial waiver, the state attorney must file a motion and the court must approve of the transfer.²⁸ Section 985.556, F.S., provides three types of judicial waivers: voluntary waiver, involuntary discretionary waiver, and involuntary mandatory waiver.

Indictment by a Grand Jury

Section 985.56, F.S., specifies that a juvenile of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment by a grand jury. If the grand jury returns an indictment on the charge, the juvenile's case must be transferred to adult court.²⁹

Direct File

Direct file is when a state attorney files an information charging a juvenile in adult court. Direct file under s. 985.557, F.S., can be either discretionary or mandatory and is accomplished exclusively by the state attorney without requiring the court's approval.³⁰ Direct file is the predominant transfer method to adult court, accounting for 97.7 percent of the transfers in 2016-17.³¹

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may file an information (direct file a juvenile) in adult court when a juvenile is:

- 14 or 15 years of age and is charged with one of the following felony offenses:
 - Arson;

²⁶ Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional nine days if the juvenile is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual. Section 985.26(2)(b), F.S.

²⁷ Section 985.26(2)(c)1. and 2., F.S.

²⁸ Section 985.556, F.S.

²⁹ Section 985.56(1), F.S.

³⁰ Section 985.557, F.S.

³¹ Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated juvenile abuse;
- Aggravated assault;
- Aggravated stalking;
- Murder;
- Manslaughter;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary in violation of s. 810.02(2)(b), F.S.;
- Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
- Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
- Aggravated battery;
- Any lewd or lascivious offense committed upon or in the presence of a person less than 16;
- Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
- Grand theft in violation of s. 812.014(2)(a), F.S.;
- Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Carjacking;
- Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
- Grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the juvenile has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.³²

Department of Juvenile Justice Direct-Support Organization

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily-created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The purpose and functions of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

Florida Juvenile Justice Foundation, Inc.

From 1994-1999, the DJJ had an ongoing partnership with the Florida Business Partners for Prevention (FBPP). At the time, the DJJ lacked statutory authority to have a DSO. In 1999, the Legislature created s. 985.672, F.S., authorizing the DJJ to establish a DSO to provide assistance, funding, and support for the DJJ in carrying out its mission.³³ In 2000, the FBPP incorporated by the name of Florida Business Partners for Juvenile Justice, Inc., to provide such assistance,

³² Section 985.557(1)(a)1.-19., F.S.

³³ Section 985.672, F.S., was created in 1999 by ch. 1999-284, L.O.F.

funding, and support to the DJJ.³⁴ The name was changed to the Florida Juvenile Justice Foundation, Inc. (Foundation) in 2006.³⁵

Repeal of s. 985.672, F.S., and DSO Compliance Review

Section 20.058(5), F.S., provides that laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. This subsection further provides that CSOs or DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019. Section 985.672, F.S., provides that the section is repealed October 1, 2018, unless reviewed and saved from repeal by the Legislature.

Staff of the Senate Committee on Criminal Justice reviewed relevant materials to determine if the DJJ and the Foundation comply with the requirements of s. 985.672, F.S., and with other statutory requirements for DSOs: s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements); s. 215.981, F.S. (CSO/DSO Audit Requirements); and s. 112.3251, F.S. (CSO/DSO Ethics Code Requirements). Staff finds that the DJJ and the Foundation are in compliance with most of the relevant DSO statutory requirements.

Staff Review of Compliance with s. 985.672, F.S. (DSO to Florida Department of Juvenile Justice)

Establishment of DSO

Section 985.672, F.S., authorizes the DJJ to establish a DSO whose sole purpose is to support the juvenile justice system. For purposes of s. 985.672, F.S., “direct-support organization” means an organization that is:

- A corporation not-for-profit incorporated under ch. 617, F.S., and approved by the Department of State;
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by the DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the adopted goals and mission of the DJJ.³⁶

Staff Finding: Compliance. The Foundation meets the definition of “direct-support organization.” In 2000, the Foundation was established.³⁷ The Foundation is a Florida non-profit corporation under ch. 617, F.S., and is approved by the Department of State.³⁸ The DJJ’s mission is, “to increase public safety by reducing juvenile delinquency through effective prevention,

³⁴ Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Approved and filed January 28, 2000) (on file with the Senate Criminal Justice Committee).

³⁵ Articles of Amendment to Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Filed February 8, 2006) (on file with the Senate Criminal Justice Committee).

³⁶ Section 985.672(1)(a)-(c), F.S.

³⁷ *Supra*, n. 34.

³⁸ The Foundation’s information is available at <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> by searching Florida Juvenile Justice Foundation, Inc. (last visited February 15, 2018).

intervention and treatment services that strengthen families and turn around the lives of troubled youth.”³⁹ The Foundation works toward advancing the DJJ’s mission by funding programs such as the Youth Investment Award program, which provides financial assistance designed to further the education and employability of juvenile justice-involved youth. Additionally, the Foundation funds back-to-school drives, Youth Success Week, the Human Trafficking Summit, in addition to running a national grant to support the Juvenile Detention Alternatives initiative.⁴⁰

Expenditures of the Foundation

Section 985.672(1), F.S., provides that expenditures of the DSO shall be used for the prevention and amelioration of juvenile delinquency and may not be used for the purpose of lobbying as defined in s. 11.045, F.S.

Staff findings: Compliance. The Foundation’s IRS Form 990 for 2015-16 shows that the majority of expenditures were for conferences, conventions, meetings, and youth programs. Additionally, the form shows that there were no expenditures made for the purposes of lobbying.⁴¹

Contractual Agreement between the DJJ and the Foundation

Section 985.672(2), F.S., provides that the DSO must operate under a written contract with the DJJ and the contract must include certain provisions.

Approval of the Articles of Incorporation and Bylaws

The contract must provide for approval of the articles of incorporation and bylaws of the DSO by the DJJ.⁴²

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the approval of the Foundation’s articles of incorporation and bylaws by the DJJ prior to adoption by the Foundation.⁴³

Submission of an Annual Budget

The contract must provide for the DSO to submit an annual budget for the approval of the DJJ.⁴⁴

³⁹ Florida Department of Juvenile Justice, *Mission*, available at <http://www.djj.state.fl.us/about-us/mission> (last visited February 15, 2018).

⁴⁰ Transmittal letter dated August 15, 2017, from the DJJ Secretary Christina K. Daly to Senate President Joe Negron, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF> (last visited February 15, 2018).

⁴¹ The IRS Form 990 for 2015-16 is the most recent tax form provided by the DJJ and the Foundation. According to DJJ staff, this is because the deadline for the submission of the tax form is in September, while the deadline to report information pursuant to DSO requirements found in s. 20.058, F.S. (described *infra*) is August. E-mail from DJJ staff to staff of the Senate Criminal Justice Committee, dated August 17, 2017 (on file with the Senate Criminal Justice Committee). *See also* IRS Form 990 for the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

⁴² Section 985.672(2)(a), F.S.

⁴³ Contract between the Florida Department of Juvenile Justice and the Florida Juvenile Justice Foundation, Inc. (executed June 4, 2009) (on file with the Senate Criminal Justice Committee).

⁴⁴ Section 985.672(2)(b), F.S.

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the review and approval of the Foundation's annual budget prior to adoption by the Foundation.⁴⁵

Certification by the DJJ that the DSO is in Compliance

The contract must provide for certification by the DJJ that the DSO is complying with the terms of the contract and in a manner consistent with the goals and purposes of the DJJ and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the DSO.⁴⁶

Staff findings: Not in compliance. The contract between the DJJ and the Foundation provides for such annual certification of the Foundation by the DJJ. However, the contract does not provide for the annual certification to be reported in the official minutes of a meeting of the Foundation and such certification has not been made in the minutes of a meeting as prescribed.⁴⁷

Staff recommendation: The contract between the DJJ and the Foundation should be amended to provide for such annual certification to be reported in the official minutes of a meeting of the Foundation. Subsequently, the board of directors must report such annual certification in the official minutes of a meeting of the Foundation.

Reversion of Moneys and Property

The contract must provide for the reversion of moneys and property held in trust by the DSO for the benefit of the juvenile justice system to the state if the DJJ ceases to exist or to the DJJ if the DSO is no longer approved to operate for the DJJ, a county commission, or a circuit board or if the DSO ceases to exist.⁴⁸

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such reversion of moneys and property.⁴⁹

Fiscal Year of the DSO

The contract must provide for the fiscal year of the DSO to begin July 1 of each year and end June 30 of the following year.⁵⁰

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such information.⁵¹

⁴⁵ *Supra*, n. 43.

⁴⁶ Section 985.672(2)(c), F.S.

⁴⁷ *Supra*, n. 43. Board meeting minutes of the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

⁴⁸ Section 985.672(2)(d), F.S.

⁴⁹ *Supra*, n. 43.

⁵⁰ Section 985.672(2)(e), F.S.

⁵¹ *Supra*, n. 43.

Disclosure Made to Donors

The contract must provide for the disclosure of material provisions of the contract, and the distinction between the DJJ and the DSO, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.⁵²

Staff findings: Compliance. The contract provides that the Foundation must distinguish itself as “the 501(c)(3) direct-support organization for the Florida Department of Juvenile Justice” to all donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications. The contract further provides for the disclosure of material provisions of the contract to donors of gifts, contributions, or bequests.⁵³

Board of Directors

Section 985.672(3), F.S., requires the Secretary of the DJJ to appoint a board of directors for the DSO. The board’s membership must consist of representatives from businesses, representatives from each of the juvenile justice service districts, and one representative appointed at large.⁵⁴

Staff findings: Not in compliance. The board’s membership is not in compliance with the statute’s requirements because the juvenile justice system no longer utilizes service districts. Thus, the membership is not made up of representatives from each district.

Staff recommendation: Section 985.672(3), F.S., should be amended to reflect the current organization of the DJJ in order for the board membership to comply. Alternatively, the statute could be amended to provide the DJJ with broad discretion to appoint members to the board, without regard to specific representation as the statute currently prescribes.

Use of Property

Section 985.672(4), F.S., provides that the DJJ may permit, without charge, appropriate use by the DSO of fixed property, facilities, and personnel services of the juvenile justice system. The DJJ may prescribe any condition with which the DSO must comply in order to use such fixed property or facilities of the juvenile justice system. The DJJ may not permit the use of any fixed property or facilities of the juvenile justice system by the DSO if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. The DJJ must adopt rules prescribing the procedures by which the DSO is governed and any conditions with which a DSO must comply to use property or facilities of the DJJ.⁵⁵

Staff findings: Compliance. The contract between the DJJ and the Foundation provides permission for the Foundation’s use of the DJJ’s property, facilities, and personnel services. However, the contract is silent on prohibiting the Foundation’s use of the DJJ’s property and facilities if the Foundation does not provide equal membership and employment opportunities to

⁵² Section 985.672(2)(f), F.S.

⁵³ *Supra*, n. 43.

⁵⁴ Section 985.672(3), F.S.

⁵⁵ Section 985.672(4)(a)-(c), F.S.

all persons regardless of race, color, religion, sex, age, or national origin.⁵⁶ Further, the DJJ adopted rules prescribing the conditions in which the Foundation may use the DJJ's property, facilities, and personnel services.⁵⁷

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include language that prohibits the Foundation's use of the DJJ's fixed property or facilities if the Foundation does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. This language is not required to be in the contract, but its inclusion would enable the DJJ and the Foundation to be in compliance with s. 985.672(4)(b), F.S., because it would apply broadly to the required practices of the Foundation.

Deposit of Funds

Section 985.672(5), F.S., provides that money may be held in a separate depository account in the name of the DSO and subject to the provisions of the contract with the DJJ.⁵⁸

Staff findings: Not in compliance. The Foundation has a separate depository account in their name.⁵⁹ However, the contract between the DJJ and the Foundation does not include any provisions regarding the separate depository account.⁶⁰

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include provisions addressing the separate depository account.

Annual Financial Audit

Section 985.672(6), F.S., requires the DSO to provide for an annual financial audit in accordance with s. 215.981, F.S.

Staff findings: Not currently applicable. Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.⁶¹ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.⁶²

⁵⁶ *Supra*, n. 43.

⁵⁷ Fla. Admin. Code R. 63J-1.002 (2007).

⁵⁸ Section 985.672(5), F.S.

⁵⁹ E-mail from the DJJ staff to staff of the Senate Criminal Justice Committee, dated January 16, 2017 (on file with the Senate Criminal Justice Committee).

⁶⁰ *Supra*, n. 43.

⁶¹ The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Section 215.981(1), F.S. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services. Section 215.981(2), F.S.

⁶² Section 11.45(3)(d), F.S.

The Foundation does not have annual expenditures in excess of \$100,000.⁶³ Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.⁶⁴

Staff Review of Compliance with s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements)

Section 20.058, F.S., establishes a comprehensive set of transparency and reporting requirements for CSOs and DSOs.

Reporting Requirements

Section 20.058(1), F.S., requires each CSO and DSO to annually submit, by August 1, the following information to the agency it supports:

- The CSO or DSO's name, mailing address, telephone number, and website address;
- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission and results obtained by the CSO or DSO;
- A brief description of the CSO or DSO's plans for the next three fiscal years;
- A copy of the CSO or DSO's code of ethics; and
- A copy of the CSO or DSO's most recent Internal Revenue Service (IRS) Form 990.⁶⁵

Staff findings: Compliance. In 2017, the Foundation reported all of the information required by s. 20.058(1), F.S.⁶⁶

Transparency of Reported CSO or DSO Information

Section 20.058(2), F.S., provides that each agency receiving information from a CSO or DSO pursuant to s. 20.058(1), F.S., shall make such information available to the public through the agency's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.

Staff findings: Compliance. The information required in s. 20.058(1), F.S., is available to the public through the DJJ's website.⁶⁷ Additionally, the DJJ provides a link to the Foundation's website.⁶⁸

⁶³ Total expenditures for 2015-16 were \$97,254. IRS Form 990 for Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

⁶⁴ While the Foundation's expenditures do not currently exceed \$100,000 and thus, the Foundation is not currently subjected to an annual financial audit pursuant to s. 215.981, F.S., the contract between the DJJ and the Foundation provides that the Foundation must provide a copy of its annual financial audit to the DJJ. *Supra*, n. 43.

⁶⁵ The IRS Form 990 is the an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. s. 501. The most recent Form 990 provided by the Foundation is from 2015-16 because the deadline for the form is September, while the deadline for the submission of the required information is August.

⁶⁶ Transmittal letter dated August 1, 2017, from Foundation Executive Director Caroline Ray to the DJJ Secretary Christina K. Daly, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF> (last visited February 15, 2018).

⁶⁷ Florida Juvenile Justice Foundation, *2017 Annual Report*, available at <http://www.djj.state.fl.us/fjff/resources> (last visited February 15, 2018).

⁶⁸ Florida Department of Juvenile Justice, "Get Involved" available at <http://www.djj.state.fl.us/fjff/foundation> (last visited February 15, 2018).

Section 20.058(3), F.S., provides that, by August 15 of each year, each agency shall report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by each CSO and DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each organization.

Staff findings: Compliance. The DJJ submitted its report by August 15, 2017, and the DJJ Secretary Daly expressed her strong recommendation for the continued collaboration and association between the DJJ and the Foundation. The letter explained that the DJJ and the Foundation share a long history of working together to improve the lives of at-risk juveniles and their families. The Foundation promotes delinquency prevention, intervention, and educational opportunities for youth, in addition to stewarding all funds raised to enhance the activities of the DJJ. "The Foundation is an integral part of the Department of Juvenile Justice and shares a long and collaborative relationship that is rare amongst direct-support organizations."⁶⁹

Contract Requirements

Section 20.058(4), F.S., provides that any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting information pursuant to s. 20.058(1) and (2), F.S. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head shall terminate any contract between the agency and the organization.

Staff findings: Not in compliance. The contract between the DJJ and the Foundation is not contingent upon the Foundation's submission and posting of the information pursuant to s. 20.058(1) and (2), F.S. The contract also does not provide for the orderly cessation of operations and reversion to the state of state funds held in trust by the Foundation *within 30 days* after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. The contract also does not provide for the DJJ Secretary to terminate the contract between the DJJ and the Foundation in the event that the Foundation fails to submit the required information for two consecutive years.⁷⁰

Staff recommendation: The DJJ and the Foundation should execute a revised contract that includes the requirements prescribed by s. 20.058(4), F.S. The contract between the DJJ and the Foundation was executed in 2009, while s. 20.058, F.S., was enacted by the Legislature in 2014.⁷¹ Additionally, the contract provides that, "The parties agree to renegotiate this agreement and any affected agreements if revisions of any applicable laws or regulations make changes in this agreement necessary."⁷²

⁶⁹ *Supra*, n. 40.

⁷⁰ *Supra*, n. 43.

⁷¹ Section 20.058, F.S., was created in 2014 by ch. 2014-96, L.O.F.

⁷² *Supra*, n. 43.

Staff Review of Compliance with s. 215.981, F.S. (CSO/DSO Audit Requirements)

As previously noted, s. 215.981(1), F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records. (For a full description of the statute, see discussion, *supra*, of s. 985.672(6), F.S. (annual financial audit)).

Staff findings: Not currently applicable. As previously noted, the Foundation does not have annual expenditures in excess of \$100,000. Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.⁷³

Staff Review of Compliance with s. 112.3251, F.S. (CSO/DSO Ethics Code Requirement)

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.⁷⁴ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.⁷⁵

Staff findings: Not in compliance. The Foundation has a code of ethics which is conspicuously posted on its website.⁷⁶ However, the Foundation's code of ethics is not in compliance with s. 112.313(2), (4), (5), and (8), F.S.

Staff recommendation: The Foundation should adopt a revised code of ethics to include requirements prescribed by s. 112.3251, F.S.

III. Effect of Proposed Changes:

The following provisions in the bill go into effect July 1, 2018

“Invest in Children” License Plates (Section 1, amending s. 320.08058, F.S.)

Current law requires proceeds from the sale of the “Invest in Children” license plate to be allocated within each county based on that county's proportionate share of the license plate fee collected by the county. The bill removes this requirement, and instead, permits the DHMSV to have discretion in determining how the proceeds from the license plate sales will be allocated, without regard to contributions based on county.

Prolific Juvenile Offender Violations of Nonsecure Detention (Section 10, amending s. 985.26, F.S.)

Current law contemplates the general treatment of a PJO awaiting a disposition hearing. However, the law does not address the treatment of a PJO who violates the terms of nonsecure detention. The bill provides that a PJO who is taken into custody for a violation of the conditions

⁷³ *Supra*, n. 63.

⁷⁴ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

⁷⁵ Section 112.3251, F.S.

⁷⁶ *Supra*, n. 67.

of his or her nonsecure detention must be held in secure detention until a detention hearing is held.⁷⁷

Discretionary Direct File (Section 15, amending s. 985.557, F.S.)

Current law provides a state attorney with discretion to direct file a juvenile who was 14 or 15 years of age at the time an enumerated offense was allegedly committed.⁷⁸ The bill changes the age in which a juvenile can be transferred to adult court by discretionary direct file for committing an enumerated offense from 14 or 15 years of age to 15 or 16 years of age.

Department of Juvenile Justice DSO (Section 17, amending s. 985.672, F.S.)

The bill removes a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted.

Current law requires the DSO's board of directors to consist of representatives from businesses, each juvenile justice service district, and one representative appointed at large. The bill amends the requirements relating to the DSO's board representation to require the DJJ to appoint members to the DSO's board of directors pursuant to the DSO's bylaws.

All changes related to the revised DRAI go into effect July 1, 2019

Supervised Release (Section 2, amending s. 985.03, F.S.)

The bill replaces the term "nonsecure" with "supervised release" and retains the definition of the term, defined as temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the DJJ staff pending adjudication or disposition, through programs that include, but are not limited to:

- Electronic monitoring;
- Day reporting centers; and
- Nonsecure shelters.

The bill removes home detention and evening reporting centers from this definition.

⁷⁷ The PJO would be held in secure detention for up to 24 hours until his or her detention hearing when the judge would decide whether the PJO will be released back to nonsecure detention or rather placed in secure detention. Section 985.255, F.S. See also Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

⁷⁸ The enumerated felonies are arson; sexual battery; robbery; kidnapping; aggravated juvenile abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary in violation of s. 810.02(2)(b), F.S.; burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.; burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft in violation of s. 812.014(2)(a), F.S.; possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.; home invasion robbery; carjacking; grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the juvenile has a previous adjudication for grand theft of a motor vehicle in violation of ss. 812.014(2)(c)6., or 812.014(2)(b), F.S. See s. 985.557(1)(a)1.-19., F.S.

Risk Assessment Instrument (Section 7, amending s. 985.245, F.S.)

Current law requires the DRAI used by the DJJ in assessing whether a juvenile should be placed in detention care to take certain factors into consideration in making that determination. The bill requires the DRAI to take into consideration the following factors:

- Pending felony and misdemeanor offenses;
- Offenses committed pending adjudication;
- Prior offenses;
- Unlawful possession of a firearm;
- Violations of supervision;
- Supervision status at the time the child is taken into custody; and
- All statutory mandates for detention care.

The bill removes several requirements for the DRAI to take into consideration including theft of a motor vehicle and possession of a stolen motor vehicle.

For a juvenile who is under the supervision of the DJJ and is charged with committing a new offense, the bill removes consideration of the new offense from the scoring to be used in the DRAI.

Detention Intake (Section 8, amending s. 985.25, F.S.)

Current law provides that a juvenile who has been taken into custody on three or more separate occasions within a 60-day period must be placed in secure detention until the juvenile's detention hearing. The bill removes this criteria from the statute.

Detention Criteria (Section 9, amending s. 985.255, F.S.)

Current law provides for certain circumstances in which a court may order a continued detention status for a juvenile at the initial detention hearing. The bill adds an additional circumstance, providing that continued detention may be ordered at the hearing if the result of the DRAI indicates secure or supervised release detention.

The bill removes the following circumstances in which a court was permitted to order a continued detention status for a juvenile at the detention hearing:

- If the juvenile is charged with committing an offense of domestic violence;
- If the juvenile is charged with possession of or discharging a firearm on school property;
- If the juvenile is 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., 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;
- If the juvenile is alleged to have violated the conditions of the child's probation or conditional release supervision;
- If the juvenile is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:
 - For an adjudicatory hearing on the same case regardless of the results of the DRAI; or
 - At two or more court hearings of any nature on the same case regardless of the results of the DRAI; or

- If the juvenile is 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 juvenile:
 - Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
 - 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.

Violation of Probation or Postcommitment Probation (Section 14, amending s. 985.439, F.S.)

The bill provides that a juvenile taken into custody pursuant to s. 985.101, F.S.,⁷⁹ for violating conditions of probation must be screened and detained or released based on his or her DRAI score. The bill eliminates the term “consequence unit” and references therein because consequence units are no longer in operation.

Revised Detention Risk Assessment Instrument (Sections 2-9, 11-14, 16)

The bill makes several changes throughout ch. 985, F.S., including replacing the term “nonsecure” with “supervised release,” to be consistent with modifications being implemented with the DJJ’s forthcoming use of the revised DRAI.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁷⁹ Section 985.101, F.S., provides circumstances in which a juvenile may be taken into custody.

B. Private Sector Impact:

The removal of the provision that repeals s. 985.672, F.S., enables the DJJ's DSO to sustain a source of financial and other direct assistance for advancing the DJJ's mission to increase public safety by reducing juvenile delinquency.

C. Government Sector Impact:**Prolific Juvenile Offender Costs for Violations Secure Detention**

The Criminal Justice Impact Conference has not provided an estimate of the bill's impact. The department estimates that, while the requirement for requiring PJOs who violate non-secure detention to be held in secure detention overnight could result in increased utilization of secure detention, this change is not expected to have a substantive fiscal impact.⁸⁰ Of the 256 PJOs throughout the state, 86 are in nonsecure detention.⁸¹ In the event that every PJO in nonsecure detention violated his or her conditions of detention, the DJJ will be able to provide accommodations to such juveniles and absorb such costs with existing resources.⁸²

Reduction in Juveniles Transferred to Adult Court

Additionally, the bill is likely to reduce the number of juveniles transferred to the adult system, thus increasing the DJJ's population and reducing the DOC's prison population. The DJJ estimates that there will be an additional 19 juveniles in the care of the DJJ due to the juveniles no longer being eligible for transfer to adult court pursuant to the bill. The DJJ estimates that the detention and treatment cost for these additional juveniles would cost \$1,355,086.⁸³ Additional facility costs to care for these additional juveniles is indeterminate.⁸⁴ The impact on the DOC's prison population is indeterminate.

Funding and Support to the DJJ from the DSO

The removal of the provision that repeals s. 985.672, F.S., enables the DSO to continue to provide assistance, funding, and support for activities authorized by the DJJ.

Implementing the Revised DRAI

All costs associated with the implementation of the modified DRAI have been or will be absorbed by the DJJ and this bill will not result in a fiscal impact on the DJJ with regards to such operational changes.

⁸⁰ Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

⁸¹ Department of Juvenile Justice, *PJO Statewide Report*, (last updated January 22, 2018) (on file with the Senate Criminal Justice Committee).

⁸² Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

⁸³ *Id.*

⁸⁴ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 320.08058(11), F.S., currently authorizes the DHSMV to allocate the proceeds from the “Invest in Children” license plate annual use fee, while the DJJ allocates the proceeds in practice. Replacing the word “department” in statute with “Department of Juvenile Justice” would rectify this discrepancy.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.08058, 985.03, 985.037, 985.039, 985.101, 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.35, 985.439, 985.557, 985.601, and 985.672.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 14, 2018:

The committee substitute:

- Removes the requirement that the proceeds from the “Invest in Children” license plate must be allocated based on each county’s proportionate share of the license plate annual use fee;
- Revises the DRAI used to determine placement of a juvenile in detention care;
- Replaces the term “nonsecure” with “supervised release” and makes other conforming changes throughout ch. 985, F.S., to be consistent with terminology and operation of the revised DRAI;
- Changes the minimum age in which a juvenile qualifies for transfer to adult court by discretionary direct file to 15 or 16 years of age (currently 14 or 15) if he or she is charged with an enumerated felony;
- Removes provisions related to modifying the minimum age in which a juvenile can be transferred to adult court by judicial waiver, discretionary waiver for 16 and 17 year olds, and mandatory direct file; and
- Removes the repeal date for statutory authority (s. 985.672, F.S.) for the DJJ’s DSO.

B. Amendments:

None.