

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: SB 1552

INTRODUCER: 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>	Favorable
2.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Sadberry</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting

I. Summary:

SB 1552 makes numerous changes relating to juvenile justice.

Specifically, the bill:

- 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;
- Requires the court to consider a predisposition report (PDR) if the court determines that adjudication and commitment to the Department of Juvenile Justice (DJJ) are appropriate and prohibits any party or agreement from waiving a PDR;
- Changes the minimum age in which a juvenile qualifies for transfer to adult court in the following ways:
 - Involuntary judicial waiver – from 14 years of age to 15 years of age;
 - Discretionary direct file:
 - 15 or 16 years of age (currently 14 or 15) and charged with an enumerated felony;
 - 17 years of age (currently 16 or 17) at the time any felony was committed;
 - 17 years of age (currently 16 or 17) at the time a misdemeanor was committed, provided the juvenile has had at least two previous adjudications withheld for delinquent acts, one of which was a felony.
 - Mandatory direct file – from 16 or 17 years of age to 17 years of age.

The bill also reenacts statutory authority (s. 985.672, F.S.) for the DJJ to establish a direct-support organization (DSO) to provide assistance, funding, and support to assist the DJJ in furthering its goals. The bill delays the scheduled repeal of the law governing the creation of a direct-support organization by the DJJ. 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 requires the DJJ to collect and annually report data to the Governor, President of the Senate, and Speaker of the House of Representatives regarding juveniles who qualify for prosecution as adults. The DJJ must work with the Office of Program Policy Analysis and Government Accountability (OPPAGA) to aggregate the data and create a report.

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 significantly and reduce the Department of Corrections' expenditures significantly. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2018.

II. Present Situation:

Juvenile Detention

When a juvenile is taken into custody by law enforcement or the court, the DJJ must determine whether detention care is appropriate.¹ Detention is the temporary custody status for juveniles who are held pursuant to a court order or after being taken into custody for a violation of law.² A juvenile is held in detention pending a court adjudication or disposition or execution of a court order.³ If detention care is deemed necessary by the DJJ, a decision between secure or nonsecure detention must be made.

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.⁴ 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.⁵

The initial decision as to the juvenile's placement into detention care is made by the DJJ and is based on a risk assessment according to procedures developed by the DJJ.⁶ However, a juvenile must be placed in secure detention until the detention hearing if the juvenile:

- 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.⁷

¹ Section 985.25(1), F.S.

² Florida Department of Juvenile Justice, *Detention Services*, available at <http://www.djj.state.fl.us/services/detention> (last visited January 26, 2018).

³ Section 985.03(18), F.S.

⁴ Section 985.03(18)(a), F.S.

⁵ Forms of nonsecure detention include, but are not limited to: home detention, electronic monitoring, day reporting centers, evening reporting centers, and nonsecure shelters. Nonsecure detention may include other requirements imposed by the court. See s. 985.03(18)(b), F.S.

⁶ Section 985.25(1)(b), F.S.

⁷ Section 985.25(1)(a)-(b), F.S.

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.⁸

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.⁹

Prolific Juvenile Offender

The PJO designation was established to apply to youth with excessively high recidivism.¹⁰ 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 event¹¹ for which a disposition¹² has not been entered;
 - An adjudication; or
 - An adjudication withheld.¹³

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.¹⁴

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

- 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.;¹⁵ or

⁸ Section 985.26(1), F.S.

⁹ Section 985.26(2)(a)-(c), F.S.

¹⁰ Section 985.255(1)(j), F.S., was created in 2017 by ch. 2017-164, L.O.F.

¹¹ “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.

¹² “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.

¹³ Section 985.255(1)(j), F.S.

¹⁴ Section 985.26(2)(c), F.S.

¹⁵ 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.

- 15 days after the entry of an order of adjudication.¹⁶

Disposition Hearings

Following placement in either secure or nonsecure detention, a juvenile will have an adjudicatory hearing (non-jury trial), where a judge will determine whether the juvenile committed a delinquent act or violation of law.¹⁷

If the judge finds that the juvenile committed a delinquent act or violation of law, the court then must determine the appropriate sanctions. In making this determination, the court must take into account recommendations made by the DJJ, which may include a PDR.¹⁸ A PDR must be ordered for any juvenile for whom a residential commitment disposition is anticipated or recommended by the court or the DJJ.¹⁹ The PDR is prepared by a DJJ probation officer in preparation for a disposition of a juvenile's case and provides a recommendation of the most appropriate placement for a juvenile.²⁰

The PDR must include evaluation of the following:

- The seriousness of the offense to the community;
- Whether the protection of the community requires adjudication and commitment to the DJJ;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;
- The sophistication and maturity of the juvenile;
- The record and previous criminal history of the juvenile;²¹
- The juvenile's educational status;²² and
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile if committed to a community services program or facility.²³

¹⁶ Section 985.26(2)(c)1. and 2., F.S.

¹⁷ Section 985.35, F.S.

¹⁸ Section 985.433(6), F.S.

¹⁹ Section 985.43(1)(a), F.S.

²⁰ Section 985.43, F.S.

²¹ This includes: previous contacts with the DJJ, the former Department of Health and Rehabilitative Services, the Department of Children and Families, the Department of Corrections, other law enforcement agencies, and courts; prior periods of probation; prior adjudications of delinquency; and prior commitments to institutions. *See* s. 985.433(6)(f)1.-4., F.S.

²² This includes, but is not limited to: the juvenile's strengths, abilities, and unmet and special educational needs. The PDR shall identify appropriate educational and career goals for the juvenile. Examples of appropriate goals include: attainment of a high school diploma or its equivalent; successful completion of literacy courses; successful completion of career and technical education courses; successful attendance and completion of the juvenile's current grade or recovery of credits of classes the juvenile previously failed, if enrolled in school; and enrollment in an apprenticeship or a similar program. *See* s. 985.433(6)(h)1.-5., F.S.

²³ Section 985.433(6)(a)-(h), F.S.

Current law permits a juvenile to waive the PDR.²⁴ This enables the court to commit a juvenile without obtaining the DJJ's recommendation in the PDR, which has resulted in a significant increase in residential commitments.²⁵

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.²⁶ Section 985.556, F.S., provides three types of judicial waivers:

- Voluntary Waiver – the juvenile requests to have his or her case transferred to adult court;²⁷
- Involuntary Discretionary Waiver – the state attorney may file a motion requesting the court to transfer any case where the juvenile is 14 years of age or older at the time the alleged delinquent act or violation of law was committed;²⁸ and
- Involuntary Mandatory Waiver – the state attorney must request the transfer of a juvenile 14 years of age or older if the juvenile:
 - Has been previously adjudicated delinquent for an enumerated felony²⁹ and the juvenile is currently charged with a second or subsequent violent crime against a person; or
 - Was 14 years of age or older at the time of commission of a fourth or subsequent felony offense and was previously adjudicated delinquent or had adjudication withheld for three felony offenses, one or more of which involved the use or possession of a firearm or violence against a person.³⁰

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.³¹

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

²⁴ See *A.L.M. v. State*, 176 So.3d 1026 (Fla. 1st DCA 2015) and *K.D.G. v. State*, 787 So.2d 56 (Fla. 2d DCA 2001).

²⁵ Department of Juvenile Justice, *2018 Bill Analysis for SB 1552*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

²⁶ Section 985.556, F.S.

²⁷ Section 985.556(1), F.S.

²⁸ Section 985.556(2), F.S.

²⁹ The enumerated felonies are: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery. See s. 985.556(3)(a), F.S.

³⁰ Section 985.556(3), F.S.

³¹ Section 985.56(1), F.S.

exclusively by the state attorney without requiring the court's approval.³² Direct file is the predominant transfer method to adult court, accounting for 97.7 percent of the transfers in 2016-17.³³

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;
 - 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.³⁴
- 16 or 17 years of age and is charged with any felony offense;³⁵ or

³² Section 985.557, F.S.

³³ Department of Juvenile Justice, *2018 Bill Analysis for SB 1552*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

³⁴ Section 985.557(1)(a)1.-19., F.S.

³⁵ Section 985.557(1)(b), F.S.

- 16 or 17 years of age and is charged with a misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.³⁶

Mandatory Direct File

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the juvenile is:

- 16 or 17 years of age at the time of the alleged offense and:
 - Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;³⁷
 - Is charged with a forcible felony³⁸ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;³⁹ or
 - Is charged with committing or attempting to commit an offense listed in s. 775.087(2)1.a.-p., F.S.,⁴⁰ and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device;⁴¹ or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the juvenile, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.

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.

³⁶ *Id.*

³⁷ The enumerated felonies include: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault. *See* s. 985.557(2)(a), F.S.

³⁸ Section 776.08, F.S., defines “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the threat of physical force or violence against any individual.

³⁹ Section 985.557(2)(b), F.S., provides that this provision does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

⁴⁰ The offenses include murder; sexual battery; robbery; burglary; arson; aggravated battery; kidnapping; escape; aircraft piracy; aggravated juvenile abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis; trafficking in cocaine; capital importation of cocaine; trafficking in illegal drugs; capital importation of illegal drugs; trafficking in phencyclidine; capital importation of phencyclidine; trafficking in methaqualone; capital importation of methaqualone; trafficking in amphetamine; capital importation of amphetamine; trafficking in flunitrazepam; trafficking in gamma-hydroxybutyric acid (GHB); trafficking in 1,4-Butaneidol; trafficking in Phenethylamines; or other violation of s. 893.135(1), F.S. Section 775.087(2)(a)1.a.-p., F.S.

⁴¹ The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

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.⁴² In 2000, the FBPP incorporated by the name of Florida Business Partners for Juvenile Justice, Inc., to provide such assistance, funding, and support to the DJJ.⁴³ The name was changed to the Florida Juvenile Justice Foundation, Inc. (Foundation) in 2006.⁴⁴

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.⁴⁵

⁴² Section 985.672, F.S., was created in 1999 by ch. 1999-284, L.O.F.

⁴³ 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).

⁴⁴ 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).

⁴⁵ Section 985.672(1)(a)-(c), F.S.

Staff Finding: Compliance. The Foundation meets the definition of “direct-support organization.” In 2000, the Foundation was established.⁴⁶ The Foundation is a Florida non-profit corporation under ch. 617, F.S., and is approved by the Department of State.⁴⁷ The DJJ’s mission is, “to increase public safety by reducing juvenile delinquency through effective prevention, intervention and treatment services that strengthen families and turn around the lives of troubled youth.”⁴⁸ 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.⁴⁹

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.⁵⁰

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.⁵¹

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.⁵²

⁴⁶ *Supra*, n. 43.

⁴⁷ The Foundation’s information is available at <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> by searching Florida Juvenile Justice Foundation, Inc. (last visited February 2, 2018).

⁴⁸ Florida Department of Juvenile Justice, *Mission*, available at <http://www.djj.state.fl.us/about-us/mission> (last visited February 2, 2018).

⁴⁹ 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 2, 2018).

⁵⁰ 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).

⁵¹ Section 985.672(2)(a), F.S.

⁵² 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).

Submission of an Annual Budget

The contract must provide for the DSO to submit an annual budget for the approval of the DJJ.⁵³

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.⁵⁴

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.⁵⁵

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.⁵⁶

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.⁵⁷

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such reversion of moneys and property.⁵⁸

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.⁵⁹

⁵³ Section 985.672(2)(b), F.S.

⁵⁴ *Supra*, n. 52.

⁵⁵ Section 985.672(2)(c), F.S.

⁵⁶ *Supra*, n. 52. Board meeting minutes of the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

⁵⁷ Section 985.672(2)(d), F.S.

⁵⁸ *Supra*, n. 52.

⁵⁹ Section 985.672(2)(e), F.S.

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such information.⁶⁰

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.⁶¹

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.⁶²

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.⁶³

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.⁶⁴

⁶⁰ *Supra*, n. 52.

⁶¹ Section 985.672(2)(f), F.S.

⁶² *Supra*, n. 52.

⁶³ Section 985.672(3), F.S.

⁶⁴ Section 985.672(4)(a)-(c), F.S.

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 all persons regardless of race, color, religion, sex, age, or national origin.⁶⁵ Further, the DJJ adopted rules prescribing the conditions in which the Foundation may use the DJJ's property, facilities, and personnel services.⁶⁶

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.⁶⁷

Staff findings: Not in compliance. The Foundation has a separate depository account in their name.⁶⁸ However, the contract between the DJJ and the Foundation does not include any provisions regarding the separate depository account.⁶⁹

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.⁷⁰ 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

⁶⁵ *Supra*, n. 52.

⁶⁶ Fla. Admin. Code R. 63J-1.002 (2007).

⁶⁷ Section 985.672(5), F.S.

⁶⁸ E-mail from DJJ staff to staff of the Senate Criminal Justice Committee, dated January 16, 2017 (on file with the Senate Criminal Justice Committee).

⁶⁹ *Supra*, n. 52.

⁷⁰ 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.

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.⁷¹

The Foundation does not have annual expenditures in excess of \$100,000.⁷² Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.⁷³

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 990.⁷⁴

Staff findings: Compliance. In 2017, the Foundation reported all of the information required by s. 20.058(1), F.S.⁷⁵

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.

⁷¹ Section 11.45(3)(d), F.S.

⁷² 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).

⁷³ 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. 52.

⁷⁴ The IRS Form 990 is the 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.

⁷⁵ 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 2, 2018).

Staff findings: Compliance. The information required in s. 20.058(1), F.S., is available to the public through the DJJ’s website.⁷⁶ Additionally, the DJJ provides a link to the Foundation’s website.⁷⁷

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.”⁷⁸

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.⁷⁹

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

⁷⁶ Florida Juvenile Justice Foundation, *2017 Annual Report*, available at <http://www.djj.state.fl.us/fjff/resources> (last visited February 2, 2018).

⁷⁷ Florida Department of Juvenile Justice, “Get Involved” available at <http://www.djj.state.fl.us/fjff/foundation> (last visited February 2, 2018).

⁷⁸ *Supra*, n. 49.

⁷⁹ *Supra*, n. 52.

Foundation was executed in 2009, while s. 20.058, F.S., was enacted by the Legislature in 2014.⁸⁰ 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.”⁸¹

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.⁸²

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.⁸³ 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.⁸⁴

Staff findings: Not in compliance. The Foundation has a code of ethics which is conspicuously posted on its website.⁸⁵ 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:

Prolific Juvenile Offender Violations of Nonsecure Detention (Section 1, amending s. 985.26, F.S.)

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

⁸⁰ Section 20.058, F.S., was created in 2014 by ch. 2014-96, L.O.F.

⁸¹ *Supra*, n. 52.

⁸² *Supra*, n. 72.

⁸³ 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.

⁸⁴ Section 112.3251, F.S.

⁸⁵ *Supra*, n. 76.

of his or her nonsecure detention must be held in secure detention until a detention hearing is held.⁸⁶

Disposition Hearings in Delinquency Cases (Section 2, amending s. 985.433, F.S.)

Current law permits the court to proceed with adjudication and commitment of a juvenile without consideration of a PDR if it is waived by a juvenile. The bill requires the court to consider a PDR before committing a juvenile if the court determines that adjudication and commitment to the DJJ are suitable. The bill deems the PDR as an indispensable prerequisite to commitment and prohibits any party or any agreement of the parties from waiving the consideration of the PDR.

Judicial Waiver (Section 3, amending s. 985.556, F.S.)

The bill changes the age in which a juvenile can be transferred to adult court by involuntary judicial waiver from 14 years of age to 15 years of age.

Direct File (Section 4, 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 the alleged offense was committed for enumerated offenses.⁸⁷ The bill changes the age in which a juvenile can be transferred to adult court by discretionary direct file for the commitment of those offenses from 14 or 15 years of age to 15 or 16 years of age.

A state attorney also has discretion to direct file a juvenile who was 16 or 17 years of age at the time the alleged offense was committed and is charged with:

- Any felony offense; or
- A misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.

The bill limits the discretion afforded to state attorneys in these scenarios by requiring the juvenile to be 17 years of age in order to be transferred to adult court.

The bill also limits the age in which a juvenile must be transferred to adult court pursuant to mandatory direct file from 16 or 17 years of age to 17 years of age.

⁸⁶ 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 SB 1552*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

⁸⁷ 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.

The bill requires the DOC to make every reasonable effort to ensure that a juvenile of any age who is transferred to adult court by direct file and subsequently convicted and sentenced be completely separated from adult offenders in the facility to ensure there is no physical contact.

Data Collection Relating to Direct File (Section 4, amending s. 985.557, F.S.)

The bill requires the DJJ, beginning March 1, 2019, to collect data relating to juveniles who qualify to be prosecuted as adults pursuant to judicial waiver or direct file. This data includes, but is not limited to:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence and commitment of offense;
- Prior adjudications or adjudications withheld;
- Prior periods of probation, including any violations of probation;
- Previous contacts with law enforcement agencies or the court which resulted in a civil citation, arrest, or charges being filed with the state;
- Initial charges;
- Charges at disposition;
- Whether juvenile codefendants were involved who were transferred to adult court;
- Whether the juvenile was represented by counsel or whether counsel was waived;
- Risk assessment instrument score;
- The juvenile's medical, mental health, substance abuse, and trauma history;
- The juvenile's history of abuse, neglect, mental impairment or disability-related accommodations;
- The juvenile's history of foster care placements, including the number of prior placements;
- Whether the juvenile has below-average intellectual functioning;
- Whether the juvenile has received mental health services or treatment;
- Whether the juvenile has been the subject of a juvenile-in-need-of-services or families-in-need-of-services petition or a dependency petition;
- Whether the juvenile was transferred for criminal prosecution as an adult and, if transferred, the provision of direct file under which the prosecution is proceeding or proceeded;
- The case resolution in juvenile court; and
- The case resolution in adult court.

Beginning March 1, 2019, the DJJ must also collect the following data relating to juveniles transferred to adult court:

- Disposition data, including, but not limited to:
 - Whether the juvenile received adult sanctions, juvenile sanctions, or diversion; and
 - If sentenced to prison, the length of the prison sentence or the enhanced sentence.
- Whether the juvenile was previously found incompetent to proceed in juvenile court.

The DJJ must work with the OPPAGA to generate a report analyzing all data listed above for every juvenile case transferred between July 1, 2017, and June 30, 2018. Such report must be provided to the Governor, the President of the Senate, and the Speaker of the House of

Representatives by January 31, 2019, and such report must be generated and provided annually to such persons no later than January 31 of the following calendar year.

Department of Juvenile Justice DSO (Section 5, amending s. 985.672, F.S.)

The bill delays the scheduled repeal of the DSO until October 1, 2018.

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 permit the DJJ to appoint members to the DSO's board of directors pursuant to the DSO's bylaws.

Other (Sections 6-14)

The bill also reenacts ss. 790.22(8), 985.115(2), 985.13(2), 985.15(1), 985.255(2) and (3)(a) and (3)(c), 985.26(2)(c), 985.265(5), 985.35(1)(a), and 985.565(4), F.S, to incorporate amendments made by this act.

The bill takes effect July 1, 2018.

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.

B. Private Sector Impact:

By delaying the repeal of s. 985.672, F.S., the DJJ's DSO sustains 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.⁸⁸ Of the 256 PJOs throughout the state, 86 are in nonsecure detention.⁸⁹ 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.⁹⁰

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 Department of Corrections' prison population. The DJJ estimates that the bill will result in 132 juveniles being ineligible for transfer to adult court and the cost for detention and treatment for these additional juveniles would be \$12,270,113.⁹¹ The impact on the Department of Corrections' prison population is indeterminate.

The bill also requires the DJJ to collect data on juveniles eligible for transfer to adult court for review and analysis, which will require modification of the Juvenile Justice Information System at an estimated cost of \$93,600.⁹² Tasks assigned to the OPPAGA in the proposed legislation may be accomplished with existing resources.⁹³

Funding and Support to the DJJ from the DSO

Additionally, by delaying the repeal of s. 985.672, F.S., the DSO may continue to provide assistance, funding, and support for activities authorized by the DJJ.

VI. Technical Deficiencies:

None.

⁸⁸ Department of Juvenile Justice, *2018 Bill Analysis for SB 1552*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

⁸⁹ Department of Juvenile Justice, *PJO Statewide Report*, (last updated January 22, 2018) (on file with the Senate Criminal Justice Committee).

⁹⁰ Department of Juvenile Justice, *2018 Bill Analysis for SB 1552*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

⁹¹ *Id.*

⁹² *Id.*

⁹³ CS/SB 936 is a similar bill relating to data collection. Office of Program Policy Analysis and Government Accountability, *2018 Bill Analysis for SB 936*, (December 6, 2017) (on file with the Senate Criminal Justice Committee).

VII. Related Issues:

The bill amends the repeal date for the statutory authority for the DSO (s. 985.672, F.S.) from October 1, 2018, to October 1, 2028. Staff recommends eliminating the scheduled repeal date altogether pertaining to the DSO.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.26, 985.433, 985.556, 985.557, and 985.672.

This bill reenacts the following sections of the Florida Statutes: 790.22, 985.115, 985.13, 985.15, 985.255, 985.265, 985.35, and 985.565.

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

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

None.

B. Amendments:

None.