

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 361 Persons Authorized to Visit Juvenile Facilities
SPONSOR(S): Criminal Justice Subcommittee; Richardson and others
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Tuszynski	Sumner
2) Judiciary Committee	18 Y, 0 N	Tuszynski	Poche

SUMMARY ANALYSIS

Juveniles within the Florida juvenile justice system may be housed in detention centers and/or residential facilities. The Department of Juvenile Justice (DJJ) operates 21 detention centers. DJJ also contracts with private providers that operate residential commitment programs throughout Florida, which provide behavioral health, mental health, substance abuse, and sex offender treatment services to juveniles.

HB 361 creates s. 985.6885, F.S., authorizing the following persons to visit all facilities housing juveniles that are operated or overseen by DJJ or a county:

- The Governor;
- A Cabinet member;
- A member of the Legislature;
- A judge of a state court;
- A state attorney;
- A public defender; and
- A person authorized by the Secretary of the department.

CS/HB 361 allows visitation by these persons between 6:00 a.m. and 11:00 p.m., at their pleasure, and allows any visitation before 6:00 a.m. or after 11:00 p.m. pursuant to rules adopted by DJJ. The bill prohibits DJJ from unreasonably withholding permission to visit a state facility housing juveniles from a person who provides sufficient evidence that he or she is a bona fide reporter or writer.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Juvenile Detention Centers and Residential Facilities

Juveniles in the Florida juvenile justice system may be housed in detention centers and/or residential facilities.

Juvenile Detention Centers

The Department of Juvenile Justice (DJJ) operates 21 detention centers throughout Florida. Detention is the custody status for juveniles who are held pursuant to a court order or taken into custody for a violation of law. Detention centers provide custody, supervision, education, and mental health/substance abuse and medical services to juveniles.¹

Generally a juvenile cannot be held in detention care for longer than 24 hours.² Section 985.255, F.S., requires a juvenile to have a detention hearing to determine the existence of probable cause and the need for continued detention within 24 hours of being taken into custody and placed in detention.³ A juvenile cannot be held in detention for more than 21 days unless an adjudicatory hearing has been commenced.⁴ The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare in cases involving certain serious crimes.⁵ A prolific juvenile offender⁶ may also be held for 15 days after the order of adjudication.⁷

Juvenile Residential Commitment Programs

DJJ contracts with private providers that operate residential commitment programs throughout Florida. Residential programs provide behavioral health, mental health, substance abuse, and sex offender treatment services to juveniles.⁸ Only a judge can place a juvenile into a DJJ residential commitment program for an adjudication. Commitment to a residential program is for an indeterminate period of time and may include periods of temporary release.⁹

Each residential program is monitored regularly and evaluated through the DJJ's Bureau of Monitoring and Quality Improvement (Bureau).¹⁰ The Bureau conducts reviews throughout the fiscal year to ensure that the programs are in compliance with contract terms and conditions, statutes, rules, and DJJ policies.¹¹

¹ Florida Department of Juvenile Justice, *Detention Services*, available at <http://www.djj.state.fl.us/services/detention> (last accessed February 1, 2018).

² S. 985.26(1), F.S.

³ S. 985.255(3)(a), F.S.

⁴ SS. 985.26(2) and (3), F.S.

⁵ These serious crimes include capital felonies, life felonies, and first or second degree felonies. S. 985.26(2), F.S.

⁶ A juvenile is a prolific juvenile offender if the juvenile: is charged with a delinquent act that would be a felony if committed by an adult; has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the current charge; and has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult: an arrest event for which a disposition has not been entered, an adjudication or an adjudication withheld. S. 985.255(1)(j), F.S.

⁷ S. 985.26(3), F.S.

⁸ Florida Department of Juvenile Justice, *Residential Services*, available at <http://www.djj.state.fl.us/services/residential> (last accessed February 1, 2018).

⁹ Id.

¹⁰ Id.

¹¹ Florida Department of Juvenile Justice, *Monitoring and Quality Improvement*, available at <http://www.djj.state.fl.us/partners/QI> (last accessed February 1, 2018).

Investigation into State Facilities Housing Juveniles

A recent investigation conducted by the *Miami Herald* analyzed 10 years of DJJ incident reports, investigations and reviews, inspections, emails, and surveillance videos, revealing incidents of misconduct that have occurred at DJJ facilities.¹² The series of articles discussed some of the issues facing DJJ facilities over the years: inexperienced and underpaid staff, inadequate personnel screening and standards, tolerance for cover-ups, faulty security cameras, and legal impunity for staffers.¹³

In response to the article, DJJ issued a press release, stating that the stories published in the *Miami Herald* did not accurately define the juvenile justice system in Florida. DJJ's response addressed each claim asserted in the *Miami Herald* article and further stated that the article ignored the aggressive reforms that DJJ has implemented over the past six years.¹⁴

Visitation of State Juvenile Facilities

Currently, any member of the Legislature who wishes to tour any of the detention centers or residential programs may arrange a visit with the DJJ Legislative Affairs Office or may schedule a visit of any DJJ facility on his or her own accord.¹⁵ In contrast, any member of the Legislature, including other specified persons, have unrestricted visitation privileges to state correctional facilities.¹⁶

On October 18, 2018, DJJ sent a letter to members of the Legislature concerning visitation of DJJ's facilities. The letter addressed unannounced visits to DJJ facilities and the differences between adult correctional facilities and the juvenile facilities. The letter noted that juveniles in the DJJ's programs are statutorily entitled to a degree of confidentiality while adult offenders are not entitled to such protections. Specifically, s. 985.04, F.S., requires a juvenile's information to be kept confidential. The letter further noted that many of the juveniles suffer from previous trauma and interruptions to their daily schedules can be problematic. The letter requested that members of the Legislature wishing to visit a DJJ facility consider these circumstances.¹⁷

Visitation of State Adult Correctional Institutions

Section 944.23, F.S., authorizes the following persons to visit at their pleasure all adult state correctional institutions:

- The Governor;
- All Cabinet members;
- Members of the Legislature;
- Judges of state courts;
- State attorneys;
- Public defenders; and
- Authorized representatives of the Florida Commission on Offender Review.¹⁸

Current law prohibits any person not otherwise authorized by law from entering a state correctional institution except pursuant to rules prescribed by the Department of Corrections (DOC). Additionally,

¹² Audra D.S. Burch and Carol Marbin Miller, *Dark secrets of Florida juvenile justice: 'honey-bun hits,' illicit sex, cover-ups*, *Miami Herald*, October 10, 2017, available at <http://www.miamiherald.com/news/special-reports/florida-prisons/article177883676.html> (last accessed February 1, 2018).

¹³ *Id.*

¹⁴ Press Release, Florida Department of Juvenile Justice, *Setting the Record Straight: Miami Herald Omits Facts, Ignores Reforms in Series Targeting DJJ*, available at: <http://www.djj.state.fl.us/news/press-releases/press-release-detail/2017/10/10/setting-the-record-straight-miami-herald-omits-facts-ignores-reforms-in-series-targeting-djj> (last accessed February 1, 2018).

¹⁵ Email from Rachel Moscoso, Legislative Affairs Director, Florida Department of Juvenile Justice, Fwd: Letter to the Legislature (Jan. 23, 2018) (on file with Judiciary Committee).

¹⁶ S. 944.23, F.S.

¹⁷ *Supra*, FN 8.

¹⁸ S. 944.23, F.S.

permission to visit state prisons must not be unreasonably withheld from those who give sufficient evidence to the DOC that they are bona fide reporters or writers.¹⁹

Effect of Proposed Changes

CS/HB 361 creates s. 985.6885, F.S., authorizing the following persons to visit all facilities housing juveniles that are operated or overseen by DJJ or a county:

- The Governor;
- A Cabinet member;
- A member of the Legislature;
- Judges from state courts;
- A state attorney;
- A public defender; and
- A person authorized by the Secretary of the department.

The bill allows visitation by these persons between 6:00 a.m. and 11:00 p.m., at their pleasure, and allows any visitation before 6:00 a.m. or after 11:00 p.m. pursuant to rules adopted by DJJ.

The bill prohibits DJJ from unreasonably withholding permission to visit a state facility housing juveniles from a person who provides sufficient evidence that he or she is a bona fide reporter or writer.

The bill is effective on July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Creates s. 985.6885, F.S., relating to persons authorized to visit state juvenile facilities.

Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁹ Id.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides DJJ with sufficient rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2018, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Made the provisions applicable to all juvenile justice facilities, including those run by counties.
- Allowed visitation by specific persons between 6am and 11pm, at their pleasure, and allowed any visitation before 6am or after 11pm pursuant to rules adopted by DJJ.
- Provided rulemaking authority to DJJ to implement the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.