

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 Criminal Justice

BILL: CS/SB 624

INTRODUCER: Criminal Justice Committee and Senator Montford

SUBJECT: Youth in Solitary Confinement

DATE: March 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 624 creates ss. 945.245, 985.28, and 985.4415, F.S., which prohibit a youth from being placed in isolation except in certain circumstances. The restrictions for placing a youth in isolation created in the bill are the same for youth in the custody of the Department of Corrections (DOC) or the Department of Juvenile Justice (DJJ). Additionally, the bill amends s. 951.23, F.S., requiring a new model rule to be included in the Model Jail Standards that ensures compliance with the standards for placing a youth in isolation established in the newly created s. 945.425, F.S., and requiring each sheriff and chief correctional officer to adopt such model rule. The Model Jail Standards apply to county detention facilities.

The bill prohibits solitary confinement and limits the circumstances for placing a youth into isolation to emergency or medical confinement. A placement of a youth into one of these two types of confinement is limited to specific periods of time. For emergency confinement, a youth may not be placed in confinement for longer than 24 hours, or 48 hours if a one-time extension is granted and only if specific conditions are met. For medical confinement, a youth may not be placed in confinement for a period of time exceeding the time that is necessary for recovering from his or her illness or to prevent the spread of a communicable illness to the facility.

The bill requires that all less restrictive means for resolving the issues requiring the youth to be placed in confinement must be exhausted prior to placing the youth into emergency or medical confinement. Additionally, the bill requires that any placement of a youth in confinement in accordance with the bill must be documented and specific guidelines for monitoring a youth that

is placed in either type of confinement are established. The bill specifically prohibits the use of emergency or medical confinement for the purposes of punishment or discipline.

The bill will likely have an indeterminate positive fiscal impact (i.e. an unquantifiable increase in costs to the entity) to the DOC, the DJJ, and local counties due to the increased workload and need to hire staff to fulfill the requirement to conduct periodic evaluations of youth placed in confinement. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Solitary confinement is the most extreme form of isolation in a detention setting and can include physical and social isolation in a cell for 22 to 24 hours per day. The American Academy of Child and Adolescent Psychiatry says that juveniles placed in solitary confinement can experience a number of negative impacts, including, but not limited to, depression, anxiety, sleeplessness, psychosis, and long lasting trauma. This type of isolation can be particularly harmful for adolescents who need social interaction for ongoing developmental progress.¹ The National Conference of State Legislatures (NCSL) reports that 16 states and the District of Columbia currently prohibit or limit the use of solitary confinement with youth.²

Federal First Step Act

In December, 2018, the United States Congress passed, and President Trump signed into law, the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act” or the “FIRST STEP Act” (First Step Act).³ The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, imposing a prohibition on placing youth in solitary confinement. A “juvenile” is defined in federal law to mean a person who is less than 18 years of age.⁴

¹ The National Conference of State Legislatures, Anne Tiegen, *States that Limit or Prohibit Juvenile Shackling and Solitary Confinement*, August 16, 2018, available at <http://www.ncsl.org/research/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement635572628.aspx> (hereinafter cited as “The NCSL State Data”); See also USA Today, Jessica Feierman and Jenny Lutz, *Placing juvenile in solitary confinement doesn’t fix them. In fact, it makes them worse*, January 11, 2019, available at <https://www.usatoday.com/story/opinion/policing/2019/01/11/policing-usa-juvenile-detention-solitary-confinement-mental-illness/2505702002/> (all cites last visited February 27, 2019).

² The NCSL State Data includes a map detailing the 16 states, which include Alaska, Arizona, California, Colorado, Connecticut, Maine, Massachusetts, Nevada, New Jersey, New York, Oklahoma, Tennessee, Texas, Vermont, Virginia, and West Virginia.

³ The First Step Act of 2018, Pub. L. No. 115-391 (2018).

⁴ The United States Department of Justice, “*Juvenile*” defined, available at <https://www.justice.gov/jm/criminal-resource-manual-38-juvenile-defined> (last visited March 1, 2019).

The First Step Act specifically provides that a covered juvenile⁵ may not be placed on room confinement⁶ at a juvenile facility⁷ for discipline, punishment, retaliation, or any reason other than as a temporary response to a covered juvenile's behavior that poses a serious and immediate risk of physical harm to any individual, including the covered juvenile.⁸

Additionally, the First Step Act requires a staff member to attempt to use less restrictive techniques⁹ prior to placing a covered juvenile in room confinement. If, after attempting to use less restrictive techniques, a staff member of a juvenile facility decides to place a covered juvenile in room confinement, the staff member is required to explain to the covered juvenile the reasons for the room confinement and inform the covered juvenile of the conditions that will lead to the release from room confinement.¹⁰

The First Step Act imposes restrictions on the maximum amount of time a covered juvenile may be placed in confinement. If a covered juvenile is placed in room confinement, the First Step Act requires the covered juvenile to be released:

- Immediately when the covered juvenile has sufficiently gained control so as to no longer engage in behavior that threatens serious and immediate risk of physical harm to himself or herself, or to others; or
- If a covered juvenile does not sufficiently gain control, release from confinement must occur not later than:
 - Three hours after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm to others; or
 - Thirty minutes after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm only to himself or herself.¹¹

Additionally, the First Step Act provides that if, after the above-mentioned maximum period of time has expired, the covered juvenile continues to pose a serious and immediate risk of physical harm then he or she must:

- Be transferred to another juvenile facility or internal location where services can be provided to the covered juvenile without relying on room confinement; or
- If a qualified mental health professional believes the level of crisis service needed is not currently available, a staff member of the juvenile facility is required to initiate a referral to a location that can meet the needs of the covered juvenile.¹²

⁵ The First Step Act defines a “covered juvenile” to mean a juvenile who is being prosecuted for an alleged act of juvenile delinquency under ch. 403, U.S.C., or has been adjudicated delinquent under ch. 403, U.S.C., or who is being proceeded against as an adult in a district court of the United States for an alleged criminal offense. Pub. L. No. 115-391, s. 613 (2018).

⁶ The First Step Act defines “room confinement” to mean the involuntary placement of a covered juvenile alone in a cell, room, or other area for any reason.

⁷ The First Step Act defines “juvenile facility” to mean any facility where covered juveniles are committed pursuant to an adjudication of delinquency under ch. 403, U.S.C., or detained prior to disposition or conviction.

⁸ *Supra*, n. 3.

⁹ *Id.* For example, the First Step Act lists talking with the covered juvenile in an attempt to de-escalate the situation and permitting a qualified mental health professional to talk to the covered juvenile as less restrictive techniques.

¹⁰ *Id.*

¹¹ *Supra*, n. 3.

¹² *Id.*

The First Step Act also specifically prohibits the use of consecutive periods of room confinement for the purpose of avoiding the time limitations discussed above.¹³

The BOP reports that there are eight inmates under the age of 18 years and 1,961 inmates between the ages of 18 years and 21 years imprisoned in its facilities.¹⁴

Youth in Confinement in Florida’s Correctional Facilities

Department of Corrections

Confinement - General

Inmates in the custody of the DOC may be placed in confinement status based on specified conditions, which are detailed in the DOC’s rules. Confinement status types used by the DOC include administrative or disciplinary confinement and protective management. “Administrative confinement” means the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded.¹⁵ “Disciplinary confinement” means a form of punishment in which inmates found guilty of committing violations of the DOC rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct.¹⁶ “Protective management” means a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible.¹⁷

All inmates, regardless of age, are subject to the same consideration for placement in administrative or disciplinary confinement.¹⁸ These types of confinement may limit conditions and privileges to assist with promoting the security, order, and effective management of the institution, but otherwise the treatment of inmates in confinement is as near to that of the general population as assignment to confinement permits.¹⁹ For protective management, the Rule provides that other privileges may be restricted on a daily case-by-case basis when such restrictions are necessary for the security, order, or effective management of the institution.²⁰

¹³ The First Step Act also requires the Director of the Bureau of Justice Statistics, with information that is to be provided by the Director of the BOP to include in the National Prisoner Statistics Program the number of prisoners who have been placed in solitary confinement at any time during the previous year. Pub. L. No. 115-391, s. 610 (2018).

¹⁴ The BOP, *Statistics, Inmate Age*, available at https://www.bop.gov/about/statistics/statistics_inmate_age.jsp (last visited February 27, 2019).

¹⁵ Fla. Admin. Code R. 33-602.220(1)(a).

¹⁶ Fla. Admin. Code R. 33-602.222(1)(f).

¹⁷ Fla. Admin. Code R. 33-602.221(1)(j). Protective management is not disciplinary in nature and, to the extent possible, all less restrictive avenues to address protection needs must be employed.

¹⁸ The DOC, *SB 624 Agency Analysis*, p. 3 and 4, February 28, 2019 (hereinafter cited as “The DOC SB 624 Agency Analysis”)(on file with the Senate Committee on Criminal Justice). All inmates, regardless of age, are subject to the same penalties stated in Rule 33-601.314 of the Florida Administrative Code related to prohibited conduct and penalties for infractions of such conduct.

¹⁹ The DOC, *SB 624 Agency Analysis*, p. 3 and 5. *See also* Fla. Admin. Code R. 33-602.220(5); Fla. Admin. Code R. 33-602.221(2)(a) and (4); and Fla. Admin. Code R. 33-602.222(4).

²⁰ Fla. Admin. Code R. 33-602.221(4)(t). All such restrictions must be documented on a specified form and reported to the ICT. The ICT is authorized to restrict privileges on a continuing basis after a determination that such restrictions are necessary for the security, order or effective management of the institution. The ICT’s decision for continuing restriction must also be documented on a specified form.

However, if a youth is housed in a protective management unit they may be subject to more restrictions than a non-youth inmate for their safety and security.²¹

Certain procedures appear to apply consistently across all types of confinement, such as:

- Prior to placing the inmate in confinement, the inmate is given a pre-confinement health assessment or medical evaluation.²²
- The ability to house inmates in confinement with other inmates, subject to the inmates being interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other prior to placing inmates in the same cell.²³
- The number of inmates housed in an administrative confinement cell must not exceed the number of bunks in the cell.²⁴

Inmates in confinement retain certain modified privileges, as mentioned above. For example, such inmates are provided:

- Exercise, which occurs either in the inmate's cell if confined on a 24-hour basis or, if confinement extends beyond a 30-day period, three hours per week of exercise at a minimum out of doors.
- Showers at least three times per week and on days that the inmate works.
- Normal institution meals.²⁵
- The same clothing and clothing exchange as is provided to the general inmate population.²⁶
- Out of cell time is permitted for regularly scheduled mental health services, unless, within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others.
- Correspondence opportunities which are the same as the general inmate population.
- Telephone privileges for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden or duty warden.
- Visits, when authorized by the warden or his or her designated representative.
- Legal visits, unless there is evidence that the visit is a threat to security and order.²⁷

²¹ The DOC SB 624 Agency Analysis, p. 5.

²² See Fla. Admin. Code R. 33-602.220(2)(b) and (c) and Fla. Admin. Code R. 33-602.222(2)(a). An inmate does not have to be given the pre-confinement evaluation if he or she is currently in another confinement status that required a pre-confinement medical assessment. Rule 33-602.221, related to protective management is silent on whether a pre-confinement evaluation is necessary.

²³ Fla. Admin. Code R. 33-602.220(4)(a); Fla. Admin. Code R. 33-602.221(3)(a); and Fla. Admin. Code R. 33-602.222(3).

²⁴ Fla. Admin. Code R. 33-602.220(4)(a) and (d); Fla. Admin. Code R. 33-602.221(3). Fla. Admin. Code R. 33-602.222(3)(a).

²⁵ The exception to this is when an item on the normal menu creates a security problem in the confinement unit, in which case, another item of comparable quality is substituted. Utilization of the special management meal is authorized for any inmate in administrative confinement who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.

²⁶ The exception to this is when there is an individual factual basis that exceptions are necessary for the welfare of the inmate or the security of the institution.

²⁷ The warden or his or her designee must approve all legal visits in advance.

- Legal materials in the same manner as in general population as long as security concerns permit.^{28, 29}

Administrative Confinement

The Rule provides that an inmate may be placed into administrative confinement for the following reasons:

- Disciplinary charges are pending and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held.
- Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution.
- Pending review of an inmate's request for protection from other inmates.
- An inmate has presented a signed written statement alleging that they are in fear of staff and has provided specific information to support this claim.
- An investigation, evaluation for change of status, or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution.
- An inmate is received from another institution when classification staff is not available to review the inmate file and classify the inmate into general population.³⁰

Staff are required to conduct regular visits to administrative confinement. These visits are to be conducted a minimum of:

- At least every 30 minutes by a correctional officer, but on an irregular schedule.
- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in the case of riot or other institutional emergency.
- Weekly by the Chief of Security, when on duty at the facility, except in the case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain, warden, assistant wardens, a classification officer, and a member of the Institutional Classification Team (ICT).³¹

An inmate is assessed weekly to determine the appropriateness of placement with the goal of returning the inmate to general population as soon as the facts of the case indicate that such return can be done safely.³² Other assessment requirements that are applicable to inmates who have been confined for more than 30 days include:

²⁸ An inmate in confinement may be required to conduct legal business by correspondence rather than a personal visit to the law library if security requirements prevent a personal visit. However, all steps are taken to ensure the inmate is not denied needed access while in administrative confinement.

²⁹ The DOC SB 624 Agency Analysis, p. 3-5; Fla. Admin. Code R. 33-602.220(5); 33-602.221(4); and 33-602.222(4).

³⁰ The DOC SB 624 Agency Analysis, p. 3; Fla. Admin. Code R. 33-602.220(3).

³¹ Fla. Admin. Code R. 33-602.220(4).

³² Fla. Admin. Code R. 63-602.220(8)(a).

- A psychological screening assessment by a mental health professional to determine his or her mental condition.³³
- An interview by the ICT, who must prepare a formal assessment and evaluation report after each 30 day period in administrative confinement.³⁴

Disciplinary Confinement

Staff are required to conduct regular visits to disciplinary confinement in the same frequency as mentioned above related to administrative confinement with the addition of specific visits as follows:

- As frequently as necessary, but not less than once every 30 days, by a member of the ICT to ensure that the inmate's welfare is properly provided for and to determine the time and method of release.
- As frequently as necessary by the State Classification Officer (SCO) to ensure that the inmate's welfare is provided for and to determine if the inmate should be released if said inmate is housed in disciplinary confinement for longer than 60 consecutive days.³⁵

Department of Juvenile Justice

The Department of Juvenile Justice (DJJ) does not use solitary confinement with youth that are in the custody of its secure detention centers³⁶ or residential commitment programs.³⁷ Section 985.03(7), F.S., defines a "child" or "juvenile" or "youth" to mean any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.

The DJJ, in conjunction with the Annie E. Casey Foundation, has implemented the Juvenile Detention Alternatives Initiative (JDAI). JDAI is the most widely recognized set of national best practices on the practices and conditions inside juvenile justice facilities. The JDAI Standards

³³ Fla. Admin. Code R. 33.602.220(8)(b). The assessment includes a personal interview if determined necessary by mental health staff. All such assessments are documented in the inmate's mental health record. The psychologist or psychological specialist prepares a report and presents it to the ICT regarding the results of the assessment with recommendations. The ICT then makes the decision to continue administrative confinement. If the decision is to continue confinement, a psychological screening assessment is completed at least every 90-day period.

³⁴ Fla. Admin. Code R. 33-602.220(8)(c) and (d). Additionally, the SCO reviews the reports provided by mental health and the ICT, and may interview the inmate, to determine the final disposition of the inmate's administrative confinement status.

³⁵ Fla. Admin. Code R. 33-602.222(7). Fla. Admin. Code R. 33-602.222(1)(l) provides that the SCO refers to the office or office staff at the central office level that is responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying ICT recommendations.

³⁶ Section 985.03(19), F.S., defines "detention center or facility" to mean a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents is not considered a detention center or facility.

³⁷ Section 985.43, F.S., provides that upon adjudication of a delinquency case a court may commit a youth to the DJJ for placement in a residential commitment program. Section 985.03(44), F.S., which defines "restrictiveness level," addresses the different levels of commitment programs, including, in part, "minimum-risk nonresidential," "nonsecure residential," and "high-risk residential."

provide that solitary confinement can never be used for purposes of punishment or discipline and must be limited to periods of less than four hours.³⁸

The DJJ does use short-term supervised confinement, precautionary observation, and secure and controlled observation for youth presenting an immediate danger to themselves or others in its detention and residential facilities. Additionally, medical confinement is used for youth who present with a communicable disease that may infect others.³⁹

Detention Facilities

The applicable DJJ Rules provide definitions related to types of confinement, including behavioral confinement and medical confinement. “Behavioral confinement” is defined to mean placement of a youth in a secure room during volatile situations in which a youth’s sudden or unforeseen onset of behavior imminently and substantially threatens the physical safety of others or himself or herself.⁴⁰ “Medical confinement” is defined to mean the placement of a youth in a secure room to allow the youth to rest and recover from illness and/or prevents the spread of a communicable illness (i.e. flu, H1N1 virus, etc.).⁴¹

Additionally, confinement may not be used to harass, embarrass, demean, or otherwise abuse a youth. The use of confinement must be monitored by the Superintendent or designee and the time limit for placement of a youth in confinement is no more than eight hours unless the superintendent or his or her designee grants an extension because release of the youth would imminently threaten his or her safety or the safety of others. The Regional Director or designee must review and grant any confinement extended beyond 24 hours, and, if granted, must notify the Assistant Secretary or designee.⁴²

A confinement report must be submitted by the detention officer as soon as possible, but no later than one hour after the youth’s confinement. The confinement report must be reviewed by the detention officer’s supervisor as soon as possible, but no later than two hours after the youth’s confinement. The detention officer supervisor must evaluate and document the youth’s status, at a minimum, every three hours to determine if the continued confinement of the youth is required. A youth is prohibited from being held in confinement beyond 72 hours without a confinement hearing.⁴³

Residential Commitment Facilities

The applicable DJJ Rules to residential facilities prohibits a residential commitment program’s behavior management system from including disciplinary confinement, wherein a youth is

³⁸ See JDAI, A Project of the Annie E. Casey Foundation, *Revised JDAI Standards, Standards Instrument, 2014 Update*, p. 6, December 2014, available at <http://www.cclp.org/wp-content/uploads/2016/06/JDAI-Detention-Facility-Assessment-Standards.pdf> (last visited February 27, 2019).

³⁹ The DJJ, *SB 624 Agency Analysis*, p. 2, January 31, 2019 (on file with the Senate Committee on Criminal Justice)(hereinafter cited as “The DJJ SB 624 Analysis”); See also Fla. Admin. Code Chs. 63E-7, 63G-2, and 63N-1.

⁴⁰ Fla. Admin. Code R. 63G-2.014(7).

⁴¹ Fla. Admin. Code R. 63G-2.014(50). The use of medical confinement is not intended as punishment or discipline and is ordered by the Designated Health Authority.

⁴² Fla. Admin. Code R. 63G-2.022(4).

⁴³ Fla. Admin. Code R. 63G-2.022(4).

isolated in a locked room, as discipline for misbehavior.⁴⁴ A residential commitment program may use room restriction, which is described to mean temporarily restricting the youth's participation in routine activities by requiring the youth to remain in his or her sleeping quarters, when:

- A youth is out of control or a suicide risk.
- A supervisor has given prior approval for each use of room restriction.
- It does not exceed four hours and the door to the room remains open to facilitate staff supervision.
- Staff engages, or attempts to engage, the youth in productive interactions at least every 30 minutes.
- The program does not deny a youth basic services, such as regular meals and physical or mental health services.
- The program staff uses strategies, such as conflict resolution and constructive dialogue, to facilitate the youth's reintegration into the general population.⁴⁵

The program documents certain details for each case of room restriction, including:

- A description of the behavior that resulted in room restriction;
- The date and time room restriction was implemented;
- The name of the staff person who recommended the use of room restriction and the name of the approving supervisor;
- The name of the staff person removing the youth from room restriction;
- The date and time of removal and a description of the youth's behavior and attitude upon removal; and
- Follow-up actions taken or attempted to help re-integrate the youth back into the general population when released from room restriction.⁴⁶

A residential commitment program must ensure that staff observe a youth at least every ten minutes while in their sleeping quarters, including when on room restriction. Staff must conduct the observations in a manner to ensure the safety and security of each youth and document real time observations manually or electronically.⁴⁷

Further, a residential commitment program may use controlled observation only when necessary and as a last resort.⁴⁸ Controlled observation is defined to mean an immediate, short-term crisis management strategy, not authorized for use as punishment or discipline, wherein a youth in a residential commitment program is placed in a separate, identified, safe, and secure room.⁴⁹ Such specified programs are authorized to temporarily place a youth in a controlled observation room only in the following situations when non-physical interventions would not be effective:

⁴⁴ Fla. Admin. Code R. 63E-7.009(3)(e).

⁴⁵ Fla. Admin. Code R. 63E-7.009(4).

⁴⁶ *Id.* Further, Rule 63E-7.011, F.A.C., provides that a youth is prohibited from large muscle exercise when he or she is temporarily separated from the general population, including when placed on controlled observation or room restriction status pursuant to Rule 63E-7.013, F.A.C. However, if a youth is restricted to a room, the program must give the youth an opportunity for large muscle exercise as soon as is reasonably possible after the youth is reintegrated into the general population.

⁴⁷ Fla. Admin. Code R. 63E-7.013(3)(b).

⁴⁸ Fla. Admin. Code R. 63E-7.013(16).

⁴⁹ Fla. Admin. Code R. 63E-7.002(20).

- Emergency safety situations where there is imminent risk of the youth physically harming himself or herself, staff, or others; or
- When the youth is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the youth's safety or the safety of others.⁵⁰

Controlled observation has a maximum time limit of two hours, that can be extended by the program director in two-hour increments for no longer than 24 hours. Youth who are in controlled observation receive the standard 10-minute sight and sound check along with documentation of their behavior 15-minute intervals.⁵¹

A supervisor with delegated authority must give prior authorization for each use of controlled observation unless the delay caused by seeking prior approval would further jeopardize the safety of others and the program's security. Staff is prohibited from leaving a youth alone in a controlled observation room until an inspection of the room is conducted and it is deemed safe, secure, and in compliance with specified guidelines.⁵² The Rule further provides specific procedures for how to address a youth whose health or safety deteriorates once placed into controlled observation.⁵³

The Rule prohibits the use of controlled observation as punishment or discipline.⁵⁴

County Detention Facilities

The Florida Model Jail Standards (FMJS) are minimum standards which jails across Florida must meet to ensure the constitutional rights of those incarcerated are upheld. The FMJS Committee is required to develop and continually enforce model standards adopted by the group.⁵⁵

The FMJS defines terms such as administrative confinement and disciplinary confinement, but does not include policies specific to youth regarding such types of confinement. "Administrative confinement" is defined to mean the segregation of an inmate for investigation, protection, or some cause other than disciplinary action.⁵⁶ "Disciplinary confinement" is defined to mean the segregation of an inmate for disciplinary reasons.⁵⁷

The FMJS provides that inmates may be placed in administrative confinement for the purpose of ensuring immediate control and supervision when it is determined they constitute a threat to themselves, to others, or to the safety and security of the detention facility. The Rule requires an

⁵⁰ Fla. Admin. Code R. 63E-7.013(16).

⁵¹ The DJJ SB 624 Agency Analysis, p. 2.

⁵² *Id.*

⁵³ See Fla. Admin. Code R. 63E-7.013(16)(e)-(i). For example, a youth must be immediately removed from the controlled observation room and provided follow-up mental health services if he or she begins demonstrating acute psychological distress or suicide risk behaviors subsequent to placement in controlled observation.

⁵⁴ Fla. Admin. Code R. 63E-7.001(20).

⁵⁵ The Florida Sheriff's Association (FSA), *Florida Model Jail Standards, What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited February 27, 2019) (hereinafter cited as "FMJS Rule").

⁵⁶ The FMJS Rule 1.2.

⁵⁷ The FMJS Rule 1.17.

incident report or disciplinary report to follow the action that prompted placement in administrative confinement. Additionally, the time of release for inmates in disciplinary or administrative confinement must be recorded and filed in the inmate's file.⁵⁸

Each inmate in administrative confinement must receive housing, food, clothing, medical care, exercise, visitation, showers, and other services and privileges comparable to those available to the general population except as justified by his or her classification status or special inmates.⁵⁹ Further, special inmates should be checked by medical staff at intervals not exceeding 72 hours and inmates in administrative or disciplinary confinement must bathe twice weekly.⁶⁰ The FMJS provides that the Officer-in-Charge or designee must see and talk to each inmate in disciplinary or administrative confinement at least once each morning and once each afternoon and document the inmate's general condition and attitude at each visit.⁶¹

Additionally, the FMJS requires that an inmate confined in an isolation cell used for medical purposes be examined by a physician or designee within 48 hours following his or her confinement in such area or cell. A physician or designee must determine when the inmate will be returned to the general population. The inmate must remain in isolation if the physician or designee:

- Finds that the inmate presents a serious risk to himself or others; or
- Continues to provide the inmate with follow-up medical care and treatment during the entire time that the inmate remains confined in such area or cell as deemed necessary.⁶²

While the FMJS has some policies related to confinement as described above, the only portion that is specific to youth provides that a youth may not be confined in isolation for medical purposes unless the order is made by a medical professional and approved by a medical doctor. In addition, the model rule provides that such youth should be examined by a physician or designee within 8-12 hours of his or her confinement.⁶³

It is unclear whether there are consistent rules throughout the Sheriff's entities regarding the use of solitary confinement for administrative or disciplinary purposes with youth. Additionally, it is unclear related to the manner, type, or frequency of placing youth in confinement, if such a practice is used.

III. Effect of Proposed Changes:

The bill creates ss. 945.245, 985.28, and 985.4415, F.S., which are applicable to youth in the custody of the DOC or DJJ, respectively, prohibiting a youth from being placed in isolation except in certain circumstances. Additionally, the bill amends s. 951.23, F.S., creating an additional rule for the Model Jail Standards that addresses confinement of prisoners by classification on the basis of age and which includes a strict prohibition on the use of solitary confinement for prisoners under the age of 19 years. The bill requires each sheriff and chief

⁵⁸ The FMJS Rule 13.13.

⁵⁹ *Id.*

⁶⁰ The FMJS Rule 5.04.

⁶¹ The FMJS Rule 13.14.

⁶² The FMJS Rule 7.23.

⁶³ The FMJS Rule 21.11(e).

correctional officer to adopt the model rule to be in compliance with s. 945.425, F.S., which is created in this bill. The Model Jail Standards apply to county detention facilities.

The bill provides a general prohibition against a youth or child being placed in solitary confinement. The bill establishes criteria for placing a youth or child in emergency or medical confinement and guidelines for monitoring a youth that is placed in either type of confinement. The bill prohibits the use of emergency or medical confinement for the purposes of punishment or discipline.

The restrictions for placing a youth in isolation created in the bill are the same for youth in the custody of the DOC, the DJJ, or county detention facilities.

Definitions

The bill provides definitions relevant to the provisions of the bill, including:

- “Youth” or “child,” which means a person in the custody of the DOC or DJJ, respectively, who is under the age of 19 years.⁶⁴
- “Emergency confinement,” which means a type of confinement that involves the involuntary placement of a youth or child in an isolated room to separate him or her from others in the facility and to remove him or her from a situation in which he or she presents an immediate and serious danger to the security or safety of himself or herself or others.
- “Medical confinement,” which means a type of confinement that involves the involuntary placement of a youth or child in an isolated room to separate him or her from others in the facility to allow him or her to recover from illness or to prevent the spread of a communicable illness.
- “Mental health clinician,” which means a licensed psychiatrist, psychologist, social worker, mental health counselor, nurse practitioner, or physician’s assistant.
- “Solitary confinement,” which means the involuntary placement of a youth or child in an isolated room to separate him or her from others in the facility for any period of time.

Emergency Confinement

The bill provides that a youth or child may be placed in emergency confinement if all of the following conditions are met:

- A nonphysical intervention with the youth or child would not be effective in preventing harm or danger to the youth or others.
- There is imminent risk of the youth or child physically harming himself or herself, staff, or others or that he or she is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the safety of himself or herself or others.
- All less-restrictive means have been exhausted.

The bill also requires that facility staff document the placement of a youth or child in emergency confinement, including the justification for the placement and a description of the less-restrictive

⁶⁴ The term used in s. 945.245, F.S., is entitled “youth,” but is entitled as “child” in ss. 985.28 and 985.4415, F.S. The terms are interchangeable and have the same definition.

options that the facility staff exercised before the youth or child was placed in emergency confinement.

The bill requires a mental health clinician to evaluate a youth or child who is placed in emergency confinement within one hour of such placement to ensure that the confinement is not detrimental to his or her mental or physical health. Subsequent to the initial evaluation, a mental health clinician must conduct a face-to-face evaluations of the youth or child every two hours thereafter to determine whether he or she should remain in emergency confinement. The mental health clinician must document each evaluation and provide justification for continued placement in emergency confinement.

The bill prohibits a youth or child from being placed in emergency confinement for more than 24 hours unless an extension is sought and obtained by a mental health clinician. A one-time extension of 24 hours for continued placement may be granted if a mental health clinician determines that release of the youth or child would imminently threaten the safety of the youth or child, or others. However, if, at the conclusion of the 48-hour window, a mental health clinician determines that it is not safe for the youth or child to be released from emergency confinement, the facility staff must prepare to transfer the youth or child to a facility that is able to provide specialized treatment to address his or her needs.

The bill requires a youth or child placed in emergency confinement to have access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to him or her in other custody status placements.

Medical Confinement

The bill provides that a youth or child may be placed in medical confinement if all the following conditions are met:

- Isolation from the general inmate population and staff is required to allow the youth or child to rest and recover from illness or to prevent the spread of a communicable illness.
- A medical professional deems such placement necessary.
- The use of other less-restrictive means would not be sufficient to allow the youth or child to recover from illness or to prevent the spread of a communicable illness.

The bill prohibits a youth or child from being placed in medical confinement for a period of time exceeding the time that is necessary for recovering from his or her illness or to prevent the spread of a communicable illness to others in the facility. Additionally, facility staff is required to document the placement of a youth or child in medical confinement and include a medical professional's justification for the placement.

Subsequent to a youth or child being placed in medical confinement, a medical professional must evaluate the youth or child face-to-face at least once every 12 hours to determine whether he or she should remain in medical confinement. The medical professional must document each evaluation and provide justification for continued placement in medical confinement.

Implementation

The bill requires the DOC and the DJJ to review their policies and procedures relating to youth or children in confinement to determine whether such policies and procedures comply with the bill. Further, the DOC and the DJJ are required to certify compliance with the provisions of this bill in a report that must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2020.

The bill also amends ss. 944.09 and 985.601, F.S., authorizing the DOC and DJJ with rulemaking authority to create rules to address youth in confinement in compliance with the bill. Lastly, the bill reenacts s. 944.279, F.S., for purposes of incorporating changes made in the act.

The bill is effective July 1, 2019.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill requires all state correctional facilities, juvenile detention and residential facilities, and county detention facilities and detention centers to comply with newly created standards for placing a youth in confinement. It is possible that the requirements of the bill related to the compliance of monitoring youth placed in confinement and performing periodic evaluations of such youth by specified staff could result in local fund expenditures. However, because any such local funding resulting from the requirements of the bill will directly relate to the detention and imprisonment of youth who have been arrested or convicted of criminal offenses, under article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the DOC, DJJ, and county detention facilities to comply with new standards for the placement of youth in confinement, including the requirement of specific staff to conduct assessments of a youth on regular intervals for the entirety of the time that such youth is in emergency or medical confinement. To the extent that such entities do not have the proper types, or number, of staff to satisfy the requirements of conducting such evaluations, the bill will have an indeterminate positive fiscal impact (i.e. an unquantifiable increase in costs to the entity) due to the increased workload and the need to hire staff to fulfill the requirements of the bill.

The DJJ Impact

The DJJ reports that the total cost for implementing such provisions for youth housed in detention facilities would be \$9,247,056 for the state. Additionally, in accordance with Detention Cost Share, all non-fiscally constrained counties will pay for half of their respective detention cost, which totals to \$4,623,528. The entire half would not be covered due to the fiscally constrained counties. The DJJ reports that Detention Cost Share is a reimbursement system, meaning the entire \$9,247,052 would need to be allocated to the DJJ in year one and \$4,623,526 allocated to the DJJ in the following years for detention staff increases.⁶⁵

Specifically, the DJJ reports that it will likely need to hire a total of 90 FTE in its residential facilities with an estimated annual recurring cost of \$7,855,385. Additionally, the DJJ reports that it would have to provide coverage for an additional 128 hours a week⁶⁶ in its detention facilities totaling an estimated annual recurring cost of \$5,730,816.⁶⁷

Additionally, the DJJ reports that it will need to hire medical staff to evaluate the physical health of a youth in emergency confinement given that a mental health clinician who attempts to evaluate the physical health of a youth would risk losing his or her license. Therefore, the DJJ estimated that to evaluate the physical health of a youth in emergency confinement within two hours of placement the DJJ would need 24-hour, 7 day a week medical staffing, which will likely result in the need to hire a total of 90 FTE, totaling annual recurring costs of \$6,263,622, and an additional \$3,516,240 for the additional hours necessary to properly staff detention facilities with medical staff.⁶⁸

⁶⁵ The DJJ SB 624 Analysis, p. 6-9.

⁶⁶ *Id.* at 8. The DJJ estimated this through calculating the hours required for 24 hours a day, seven days a week equaling 168 hours of coverage needed, of which 40 hours is already funded.

⁶⁷ The DJJ SB 624 Analysis, p. 7-8.

⁶⁸ *Id.* at 8.

The DOC Impact

The DOC reports that the overall impact is indeterminate, but will likely result in a positive significant fiscal impact (i.e. a significant increase in costs). The DOC further states that it is unable to determine how many additional mental health and correctional staff will be necessary to perform the increased volume of checks required by this bill, but that it is anticipated to be significant.⁶⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 944.09, 951.23, and 985.601.

This bill creates the following sections of the Florida Statutes: 945.425, 985.28, and 985.4415.

The bill reenacts section 944.279 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March, 4, 2019:

The Committee Substitute:

- Removes the term “solitary” from any places in the bill that may lead to confusion about the new standards for confinement of youth.
- Clarifies that the mental health clinicians required to conduct certain checks under the bill must be licensed.
- Adds physician assistants and mental health counselors to the definition of “mental health clinician.”

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁶⁹ The DOC SB 624 Agency Analysis, p. 9.