

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 335 CS

Juvenile Justice

SPONSOR(S): Culp

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Juvenile Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>White</u>	<u>White</u>
2) <u>Criminal Justice Appropriations Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>DeBeaugrine</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill amends provisions of law relating to juvenile justice. Specifically, the bill:

- Authorizes detention for an adjudicated youth until disposition if the youth has a history of failing to appear at past delinquency court proceedings or has violated adjudication order terms.
- Revises the definition of a "fiscally constrained county" for purposes of defining eligibility for state financial assistance to counties to cover secure detention costs. This has the effect of adding Wakulla, Sumter and Highlands Counties to those currently eligible for state financial assistance.
- Provides that a youth's failure to return from a temporary commitment release is a non-criminal violation for a first offense and a second degree misdemeanor for a second or subsequent offense.
- Eliminates authority for juvenile boot camps and authorizes Sheriff's Training and Respect (STAR) programs.
- Creates the Juvenile Justice Accountability Commission, transfers the Department of Juvenile Justice's (DJJ's) responsibilities for research and data and quality assurance review to the commission, and requires the commission to contract for the development of a new, comprehensive evaluation, accountability, and reporting system for juvenile justice programs.
- Requires the DJJ to adopt uniform rules on use of force and physical restraint.
- Requires direct care staff to have received Protective Action Response certification within 90 days.
- Revises DJJ reporting requirements by: (a) repealing duplicative reporting requirements and obsolete provisions; (b) reinstating the requirement for an annual Outcome Evaluation Report; and (c) amending Program Accountability Measures Report provision to describe the cost-effectiveness model currently implemented and to change the report's due date.
- Creates a pilot project in the 9th Judicial Circuit to waive cost of care fees for parents who voluntarily enter parent training programs at their own expense.
- Creates a pilot project in the 1st, 11th, 13th, and 20th Judicial Circuits to permit courts to select commitment programs for youth.

The House version of the General Appropriations Act (GAA) includes a reduction of \$10.5 million to juvenile boot camp programs and additional appropriations of \$10.6 million for STAR programs. The expanded authority provided to the court to place youth in secure detention could increase utilization of secure detention beds and result in increased costs to the counties. The impact is indeterminate. The House version of the GAA includes \$822,421 in addition to that recommended by the Governor to continue state financial assistance to Wakulla, Highlands and Sumter counties as fiscally constrained counties. There could also be an indeterminate impact on contract providers who will face more stringent requirements regarding staff certification requirements. The House version of the GAA includes a price level increase of \$16 million for contract service providers. Please see the fiscal section of this analysis for additional fiscal impact data.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government— The bill creates an additional commission; however, the commission will assume data and research and quality assurance responsibilities that the Department of Juvenile Justice (DJJ or department) will no longer be required to provide. The bill also eliminates statutory requirements for separate reports on specified juvenile justice subjects where this information is reported in other publications that comprehensively address all juvenile justice programs.

Promote personal responsibility— The bill provides additional tools to the judiciary to hold youth accountable for their behavior during the period of time between adjudication and final disposition. The bill also provides consequences for a youth's willful failure to return to a residential commitment facility within the time authorized for a temporary release.

Empower families— The bill benefits families by encouraging parents of delinquents in the 9th Judicial Circuit to participate in parenting classes and by providing for cost of supervision and care fee waivers to parents who successfully complete such classes.

B. EFFECT OF PROPOSED CHANGES:

Expanded Authority for Post-Adjudication/Predisposition Detention

Background:

Under s. 985.215, F.S., a court, in determining whether to order secure, nonsecure, or home detention for a youth, must use the results of the risk assessment instrument (RAI) completed by a juvenile probation officer. The RAI incorporates the criteria for detention set forth in s. 985.215(2), F.S., which provides that a youth may be detained if he or she:

- Is alleged to have escaped or absconded;
- Is wanted in another jurisdiction for a felony;
- Has requested detention for his or her personal safety;
- Is charged with:
 - A capital, life, or first degree felony.
 - A second degree felony other than a drug offense under ch. 893, F.S.
 - A violent third degree felony.
 - A second or third degree felony drug offense under ch. 893, F.S., or a third degree non-violent felony and the youth has a record of failure to appear; a record of law violations prior to court hearings; has already been detained or has been released and is awaiting disposition; has a record of violent conduct resulting in physical injury; or is found to have been in possession of a firearm.
- Is alleged to have violated probation or conditional release.

If the RAI results do not warrant detention based on the aforementioned criteria, the court may not order detention for the youth unless: (a) the youth is charged with specified domestic violence offenses or with possession or discharge of a firearm on school property;¹ (b) the youth is detained on a judicial order for failure to appear and has previously failed to appear for an adjudicatory hearing or at two or

¹ Section 985.215(2)(d) and (e), F.S.
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more hearings in the same case;² or (c) the court enters written reasons for a deviation from the RAI results.³

If the youth is detained by the court, the maximum amounts of time in secure, nonsecure, or home detention that may be imposed are 21-days pre-adjudication and 15-days post-adjudication/predisposition. In either case detention may be extended for an additional 9 days if the court finds that the prosecution or defense require additional time and the charge is a capital, life, or first degree felony or a second degree felony involving violence. If such additional time is granted by the court, a maximum of 30-days pre-adjudication or 24-days post-adjudication/predisposition may be imposed.⁴

There have been questions raised by members of the judiciary as to their authority under this law to hold youths in secure detention past the statutory time limits, even if there is clear evidence that the youths may be a danger to themselves or others.

Impact of bill:

The bill enables a court to place an adjudicated youth in secure detention, notwithstanding the time limitations established elsewhere in statute, or on home detention with electronic monitoring until disposition in the following two circumstances:

- A youth has been found at the adjudicatory hearing to have committed a delinquent act or violation of law and has previously willfully failed to appear for other delinquency proceedings regardless of the youth's score on the RAI.
- A youth is found to be in contempt of court by violating a condition contained in the order of adjudication of delinquency.

The bill requires a standard set of conditions to be imposed in the order of adjudication. They include compliance with a curfew, school attendance, and not engaging in ungovernable behavior. Ungovernable behavior is defined to include the failure to obey reasonable and lawful demands of parents, teachers and others who are responsible for supervising the child and behavior that evidences a risk that the child will cause harm to others or the property of others.

Fiscally Constrained Counties

Background:

Current law authorizes state funding to offset the costs of providing secure detention to "fiscally constrained" counties. These counties must be within a rural area of critical state concern under s. 288.0656, F.S. for which the value of a mill is no more than \$3 million. A rural area of critical state concern is a designation conferred by the Governor and is limited to counties with a population of less than 75,000 or a county of less than 100,000 that is contiguous to a county with a population of less than 75,000 and that has been adversely affected by an extraordinary economic event or represents a unique economic development opportunity on a regional level.

Under this definition, 26 counties fall within a rural area of critical state concern. Chapter 2005-263, Laws of Florida, adds three counties that are not within a rural area of critical state concern to the list of counties eligible for funding to offset the costs of providing secure detention. The three counties are Wakulla, Highlands and Sumter. This authorization, however, expires June 30, 2006.

² Section 985.215(2)(i) and (j), F.S. (authorizing a youth with such failure to appear record to be held in secure detention for up to 72 hours prior to the next scheduled court hearing).

³ Section 985.215(2), F.S.

⁴ Section 985.215(5)(g), F.S.

Impact of bill:

The bill changes the definition of a fiscally constrained county to be any county for which the value of a mill is \$5 million or less. The effect is to make Wakulla, Highlands and Sumter eligible for state assistance to cover their costs associated with secure detention. If the value of a mill exceeds \$5 million in the future for these three counties or any of the existing 26 counties, the county would no longer be eligible for assistance. The House version of the General Appropriations Act contains sufficient funding to cover financial assistance for the three counties that would be added under this bill.

Failure to Return from a Temporary Release***Background:***

Section 985.3141, F.S., provides that it is a third degree felony for a juvenile to escape from:

- Any secure detention facility;
- Any residential commitment facility; or
- Lawful transportation to or from any such secure detention facility or residential commitment facility.

In 2002, the Third District Court of Appeals held that the failure of a juvenile to return to a residential commitment facility within the time prescribed for a temporary release⁵ does not constitute escape because s. 985.3141, F.S., only addresses flight from the confinement of a residential facility, not failure to return to the facility.⁶ The court noted that distinguishably an adult prisoner's failure to return to confinement within a prescribed time constitutes second degree felony escape under ss. 944.40 and 945.091, F.S.⁷

As a result of the above-described case, a juvenile's failure to return from a temporary release from a residential commitment facility has been treated as absconding. Prior to the July 1, 2005 effective date of House Bill 1917,⁸ a juvenile, who absconded during a temporary release, could be taken into custody and detained under s. 985.215(2)(a), F.S.⁹ House Bill 1917, however, removed a reference in this subsection to absconding from a residential commitment facility, and in doing so, the authority of a law enforcement officer to take a youth into custody for failing to return from a temporary release appears to be limited.

Impact of bill:

The bill creates s. 985.3142, F.S., to provide that a youth's willful failure to return to a residential commitment facility within the time authorized for a temporary release is a: (a) non-criminal violation for a first offense, which shall be treated in the same manner as absconding from a nonresidential commitment facility; and (b) a second degree misdemeanor for a second or subsequent offense. With these amendments, the bill also authorizes law enforcement officers to take youth into custody under their current authority in ch. 985, F.S., to take youth into custody for absconding and misdemeanors.¹⁰

⁵ Under s. 985.03(57), a juvenile may be temporarily released from a residential commitment facility. If the temporary release is from a moderate-, high-, or maximum-risk facility, the release must be approved by the court.

⁶ *J.A.G. v. State*, 825 So.2d 497, 498 (Fla. 3rd DCA 2002).

⁷ *J.A.G.*, 825 So.2d at 498.

⁸ Ch. 2005-263, L.O.F.

⁹ Section 985.215(2)(a), F.S., stated, prior to the enactment of House Bill 1917, that a child, who had escaped or absconded from a commitment program could be taken into custody and detained. House Bill 1917 amended this paragraph to provide that a child, who had escaped from a residential commitment facility or who had absconded from a nonresidential commitment program, may be taken into custody and detained.

¹⁰ See Sections 985.207 and 985.215, F.S.

Juvenile Boot Camps and STAR Programs

Background:

Section 985.309, F.S., authorizes boot camp programs for juvenile offenders. There are now four boot camps operating in the State of Florida. Each is a moderate risk residential commitment program. Eligibility for admission into a boot camp is limited to juveniles between the ages of 14 and 18 who are adjudicated for a felony with the exception of capital, life or violent first degree felonies. Youth are also required to be screened to ensure that only youth who have psychological and medical profiles conducive to success in the program are admitted.

Youth are to be placed in a program in or nearest to the judicial circuit in which the child was adjudicated unless such placement would not be in the best interest of the child or the boot camp was unable to accept the child. According to one sheriff that runs a boot camp, youth from other parts of the state are frequently referred to his program. The sheriff is unable to provide aftercare services to these youth and he feels that this negatively impacts the success of his program¹¹.

According to s. 985.309, F.S., boot camps are to provide intensive educational, physical training and rehabilitation. The programs are, to varying degrees, modeled after military boot camps and feature intense physical activity and highly structured and disciplined daily routines. Each existing boot camp has its own unique approach within this basic framework and operates under the direct authority of the sheriff. Three of the four programs currently in operation in the state provide some form of aftercare when youth leave the residential phase of the program.

The boot camps are staffed by both sworn officers and non-sworn personnel. Sworn officers and non-sworn staff at boot camps that have completed the defensive tactics portion of the law enforcement training curriculum developed by the Criminal Justice Training and Standards Commission are authorized to use physical force and restraint techniques taught as part of this curriculum. Others are required to follow the department's Protective Action Response (PAR) protocol¹². Current DJJ policy allows a staff person to work with youth prior to successfully completing training as long as certain "essential skills" are obtained. One such essential skill is "PAR trained," which is defined as 40 hours of training and at least one attempt at the test whether pass or fail¹³. Staff are allowed five attempts to pass the PAR written examination and performance evaluation¹⁴.

According to testimony provided to the Criminal Justice Appropriations Committee, research on boot camps is inconclusive as to their effectiveness compared to other types of residential programs. In fact, many studies show the programs to be less effective than other residential models. As a result of these and other concerns, nine states have closed some or all of their boot camps for juveniles. Georgia converted its boot camps to "work camps" which place more emphasis on education and treatment than a military model¹⁵.

The operating budget for the DJJ includes \$10.5 million for 320 boot camp residential beds and aftercare programs. Two programs, Collier and Bay, have closed since the department's initial operating budget was developed. Currently, four counties have boot camps (Manatee, Martin, Polk and Pinellas) that provide 260 residential beds¹⁶.

¹¹ Personal conversation with Sheriff Grady Judd from Polk County on March 16, 2005.

¹² Florida Department of Juvenile Justice Protective Action Response Policy (FDJJ-1508-03) Effective Date 6/1/01, Revised 8/15/03.

¹³ Memorandum from Secretary Anthony Schembri to the Executive Management Team dated March 4, 2005.

¹⁴ Memorandum from Secretary Anthony Schembri to the Executive Management Team dated July 23, 2004.

¹⁵ Presentation by Dr. Tom Blomberg to the House Criminal Justice Appropriations Committee on February 16, 2006.

¹⁶ Department of Juvenile Justice 2005-2006 Approved Operating Budget and e-mail from Lucy Mohs, Department of Juvenile Justice Legislative Affairs Director sent October 3, 2005. The sheriff of Martin county advised the Department of Juvenile Justice in a letter dated December 16, 2006 that he would be closing his boot camp on June 30, 2006.

On January 6, 2006, Martin Lee Anderson died after an incident involving staff at the Bay County Boot Camp. This led to a series of workshops held by the House Criminal Justice Appropriations and House Juvenile Justice committees. Much of the testimony and discussion involved the lack of uniform rules regarding use of force and physical restraints, need for improved training for direct care staff, the need for an improved accountability system for juvenile justice programs based on best practices, and the need for a strong aftercare program when youth leave the residential phase of boot camp programs.

Impact of bill:

The bill repeals s. 985.309, F.S. which authorizes boot camps for children and creates a new section 985.3091 to authorize Sheriff's Training and Respect (STAR) programs.

Prior to admission to a STAR program, youth will be required to receive substance abuse screenings in addition to medical and psychological screenings. Youth may only be admitted to a STAR program in the judicial circuit in which they were adjudicated unless this would not be in the child's best interest or the STAR program is unable to accommodate the child **and** the parents agree to placement outside the circuit. STAR programs will be required to provide both a residential component and conditional release assessment and services.

The DJJ is required to adopt rules governing the operation of boot camps which prohibit the use of psychological intimidation techniques, physical force and restraint techniques except as necessary to protect the safety of youth or others or to maintain security. Physical force and restraint techniques are more specifically forbidden as disciplinary sanctions or to encourage compliance with program requirements. STAR programs will also be required to prominently display the telephone number of the abuse registry and allow youth access to a telephone to notify the abuse registry of complaints.¹⁷

The bill requires the department to develop rules establishing training requirements for STAR programs requiring 120 hours for administrative staff and 200 hours for training for direct-care staff. Training requirements include state and federal laws related to child abuse, authorized disciplinary sanctions, limitations on use of physical force and restraints and psychological intimidation techniques, and CPR and other emergency medical procedures. The bill would require a person providing direct care to children in STAR programs to obtain his or her certification in Protective Action Response (PAR) within 90-days of employment and to be supervised by a PAR-certified person when exercising direct care until he or she is PAR-certified.

The bill does not allow children to be admitted into a STAR program until the DJJ has adopted rules and verified that STAR programs are in compliance with the rules. Provision is made for the DJJ to adopt emergency rules if necessary to allow for operation of programs starting July 1, 2006. According to s. 120.54(4), F.S., an emergency rule is valid for 90 days.

The bill also creates a new s. 985.4055, F.S., which requires the DJJ to develop uniform rules regarding the PAR policy that will apply to all programs under the jurisdiction of the department. The bill requires all direct care staff to be PAR-certified within 90-days of employment and to be supervised by a PAR-certified person when exercising direct care until he or she is PAR-certified.

Accountability Systems for Juvenile Justice Programs

Background:

The DJJ currently operates an in-house quality assurance program that uses staff working at DJJ programs as peer reviewers¹⁸. In addition, the department contracts with the Justice Research Center,

¹⁷ Section 39.01(47), F.S., is amended to clarify that the Department of Children and Families may investigate complaints made to the registry regarding abuse by law enforcement officers employed in DJJ-operated or contracted programs.

¹⁸ See <http://www.djj.state.fl.us/djjservices/qa/introqa.pdf>

Inc. to produce the Outcome Evaluation Report and Program Accountability Measures report¹⁹. Dr. Tom Blomberg with the Florida State University Center for Criminology and Public Policy delivered a presentation to the House Criminal Justice Appropriations Committee on accountability systems in juvenile justice programs across the nation on March 17, 2006. His presentation suggested a number of limitations associated with the current quality assurance and program evaluation methodologies utilized by the DJJ. Among the limitations were the lack of autonomy associated with an in-house evaluation system, the fact that results were not used to replicate best practices or eliminate ineffective programs, and questions regarding the validity of evaluation scores since 44% of residential providers challenged their quality assurance scores in 2003 with 63% getting their scores increased.

Impact of bill:

The bill would transfer the DJJ's duties and personnel associated with its current responsibilities for research and data and quality assurance review to the newly created, independent Juvenile Justice Accountability Commission. The commission will be administratively housed within the department but is authorized to hire its own staff and is independent of control and direction from the Secretary of the department.

The commission will be composed of seven individuals appointed by the Governor who must represent all geographic areas of the state and include minorities and women. Members are not eligible for appointment to the commission if they have worked for a provider under contract to the department in the two years preceding their employment or bid for a department contract. The bill also precludes members of the commission from working for a provider under contract to the department or bidding for a department contract for two years after they leave the commission.

The commission is required to invite ex officio, non-voting associates to participate in its meetings and to provide advice. These associates must include: a member of the House of Representatives and a member of the Senate; an Executive Office of the Governor employee; a department employee; a delinquency court judge; a sheriff; a provider; a member of a juvenile justice advocacy organization; a Department of Law Enforcement employee responsible for data and research; and a state university employee responsible for juvenile justice research.

The commission will be required to meet at least four times per year in Tallahassee unless the chair determines that special circumstances require a meeting in another location.

The primary responsibilities of the commission will be research and data analysis, supervision of the quality assurance review process, and the execution of a contract to develop a comprehensive evaluation, accountability, and reporting system for each juvenile justice program and for each category of the juvenile justice continuum. The evaluation protocol will be based on best practices identified and updated through a continuous review of research literature related to juvenile justice programs. Additionally, the data reporting process will afford continuous evaluation of the juvenile justice system and provide policy makers with information necessary to make changes to juvenile justice programming, policies, and law, as warranted. The commission is required to submit a report to the Legislature by February 15, 2007, which summarizes, and provides an implementation schedule for, the provider-designed evaluation, accountability, and reporting system.

The commission is also directed to serve as an information clearinghouse to local juvenile boards and to provide policy recommendations to the Governor, Legislature, and department.

¹⁹ Both reports available at <http://www.djj.state.fl.us/Research/index.html>
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Juvenile Justice Program Review and Termination

Background:

As discussed above, the DJJ is currently required to conduct annual quality assurance reviews for each juvenile justice program operated or contracted by the department. If a program fails the review, s. 985.412(5), F.S., requires the DJJ to: (a) cancel a provider's contract, unless the provider achieves compliance within six months or there are documented extenuating circumstances; and (b) take corrective action for a department-operated program and if compliance is not achieved within six months and there are no documented extenuating circumstances, the DJJ must notify the Governor and the Legislature.

Boot camps are specifically addressed in s. 985.309(8), F.S., which requires the department to conduct quarterly inspections of each boot camp program to determine if it is in compliance with department rules for continued operation of the program. If a boot camp fails an inspection, the department must terminate the program unless it complies with department rules within three months or there are documented extenuating circumstances. The quarterly inspection requirement appears to be in addition to the annual quality assurance review requirement for all juvenile justice programs in s. 985.412(5), F.S.

Impact of bill:

Under the bill, quality assurance reviews would continue to be annually required for all juvenile justice programs. With regard to the newly created STAR programs, quarterly quality assurance reviews would be required by the bill for the first year of operation. Thereafter, a STAR program may be reviewed annually if it has passed its previous review.

Additionally, the bill provides that a department-operated or contracted program must be:

- Immediately terminated if a quality assurance review indicates that the program has a deficiency in a critical life safety aspect, as defined in DJJ rule, or has failed to train its employees in compliance with s. 985.4055, F.S.
- Terminated in three months for STAR programs or in six months for all other programs if the program has failed to achieve compliance, unless there are documented extenuating circumstances as defined in DJJ rule.

Department Reporting Requirements

Background:

Currently, ss. 985.31(1)(a)4. and 985.311(1)(a)4., F.S., require the department to annually provide reports on the performance of: (a) serious or habitual juvenile offender (SHO) programs; and (b) intensive residential treatment (IRT) programs. Performance data for SHO and IRT programs, which are high-risk commitment programs, is also annually reported in the following reports published by the DJJ pursuant to s. 985.412, F.S.:²⁰

- Outcome Evaluation (OE) Report -- This report is submitted annually by February 15th,²¹ and it includes referral, offense type, demographic profile, length of stay, program completion, and recidivism data for all programs offered in the DJJ's four branches, i.e., Prevention and Victim Services, Detention, Probation and Community Corrections, and Residential Corrections. Prior to 2002, the Juvenile Justice Advisory Board (JJAB) was responsible for completion of the OE Report.

²⁰ See 2005 Outcome Evaluation Report, February 15, 2005, pp. 83-112; 2005 Program Accountability Measures Report, December 2004, pp. 15, 19-20, 28, 35, 40, 44, 47, 55-56, 58; and 2005 Quality Assurance Report, January 2006, at pp. 286-291, 303, and 314.

²¹ Data reported in the 2005 OE Report was based upon programs that released youth between July 1, 2002 and June 30, 2003.

The JJAB sunset on June 30, 2001,²² and thereafter, the DJJ assumed responsibility for the report. Currently, there is no statutory description of the report, as this was repealed with the sunset; however, references to outcome evaluations continue to be made in ch. 985, F.S.²³

- Program Accountability Measures (PAM) Report – This report is required by s. 985.412(4)(a), F.S., to be annually submitted by December 31st,²⁴ and it contains PAM scores for each DJJ commitment program. A PAM score consists of a program recidivism effectiveness measure and a cost effectiveness measure. Recidivism effectiveness is calculated as the standardized difference between the program's expected recidivism and observed recidivism. Cost effectiveness is calculated as the standardized difference between each program's average cost per youth completing the program and the statewide average cost per completion of \$34,083.²⁵
- Quality Assurance Report – This report is required by s. 985.412(5), F.S., to be submitted to the Legislature each year by February 1st,²⁶ and it contains the following for each DJJ program: (a) a description of the population served; (b) a description of the services offered; (c) the program's quality assurance rating;²⁷ and (d) cost data.

Additionally, s. 985.317(5), F.S., requires the DJJ to annually report to Legislature by January 1st on the implementation and progress of literacy programs offered in residential facilities. Information about educational programs in juvenile justice facilities is also required by s. 1003.52(19), F.S., to be annually reported to the Legislature by February 1st of each year by the DJJ and the Department of Education (DOE). The subsection specifies that this report must: (a) describe progress made toward developing effective educational programs for juvenile delinquents; (b) include funding data and quality assurance review scores for each educational program; and (c) recommendations for system improvement.

Impact of bill:

The bill repeals:

- Sections 985.31(1)(a)4., and 985.311(1)(a)4., F.S., to eliminate the requirements for separate annual reports on the performance of SHO and IRT programs, as this information is duplicative of data reported in the DJJ's annual OE, PAM, and quality assurance reports.
- Section 985.317(5), F.S., to eliminate the requirement of a separate annual report on the implementation and progress of the literacy programs, as information on juvenile justice education programs is also reported in the DJJ's and DOE's annual education report required by s. 1003.52(19), F.S..

Further, the bill amends s. 985.412, F.S., which currently requires annual PAM, cost data, and quality assurance reports, to:

- Reorganize the section's contents more logically, rename the section to more accurately reflect its contents, and add subsection titles to readily identify each subsection's contents.
- Revise the definition section by:
 - Substituting the term "youth" for the obsolete term "client" to more accurately reflect the population served by the DJJ.

²² See s. 985.401, F.S., (2001).

²³ Section 985.412(4)(a), F.S., continues to reference, ". . . the standard methodology developed under s. 985.401(4) for interpreting program outcome evaluations" See also s. 985.404(10)(d), F.S.

²⁴ Data reported in the 2005 PAM Report was based upon 151 programs that had released at least 15 youth between July 1, 2001 and June 30, 2003.

²⁵ See 2005 Program Accountability Measures Report, December 2004 at p. 5.

²⁶ Data reported in the 2005 QA Report was based upon QA reviews conducted during calendar year 2005.

²⁷ QA ratings are based upon evaluation of the following three elements: (1) level of performance and quality of services; (2) immediate and long-term outcomes; and (3) cost. See An Introduction to Florida's Juvenile Justice Quality Assurance System, Department of Juvenile Justice, May 2004, p. 4.

- Adding the term “program” to mean a department-operated or contracted facility, service, or program for youth.
 - Repealing the term “program effectiveness” as it is no longer used in the section.
 - Adding the term “program group.”
- Reinstate the statutory requirement for an annual OE Report. The bill:
 - Requires the DJJ, in consultation with specified others, to develop and utilize a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group.
 - Specifies that the standard methodology should incorporate performance-based budgeting measures; must include common terminology and operational definitions; and must specify program outputs and desired youth outcomes for each program and program group.
 - Requires the report to be annually submitted by February 15th and specifies that the report must identify and describe the standard methodology implemented; programs within each program group; the demographic profile and offense history of youth served in each program group; and actual program outputs and youth outcomes achieved in each program group.
 - Eliminate the requirement in s. 985.412(3), F.S., for a separate annual cost data report. A similar requirement for annual cost data reporting is added to the description of quality assurance report contents at subparagraph (5)(g)4, and like current law, this reporting requirement calls for use of a uniform format to allow cost comparisons among programs and inclusion of the cost of educational programs in the cost of residential programs. Unlike current law and at the request of the DJJ, the bill removes requirements for: (a) the inclusion of market equivalent rent in the cost of state operated services, as according to the DJJ, such inclusion is not current practice and would require the hiring of consultants for compliance; and (b) a cost benefit analysis of juvenile justice educational programs, as cost data and performance information for all juvenile justice educational programs are required to be annually reported under s. 1003.52(19), F.S.
 - Revise the statutory description of the cost-effectiveness model utilized for the PAM Report to reflect the model currently being implemented and to change the report’s due date.
 - Eliminate outdated provisions relating to incentive and disincentive proposals and liquidated damages.

Cost of Supervision/Care

Background:

Section 985.2311, F.S., requires the court to order the parents of a delinquent to pay: (a) \$1 per day that the child is on home detention, probation, or other supervision status or in a minimum-risk nonresidential commitment program; and (b) \$5 per day that the child is in secure detention or in residential commitment. The court must consider the parents’ ability to pay and may reduce or waive the fee if the court makes a finding of indigency and significant financial hardship.²⁸ Further, the court may reduce or waive the fee if the court finds that the child’s parent was the victim in the case and is cooperating, or has cooperated, with the investigation of the case.²⁹

Impact of bill:

The bill creates a pilot program in the Ninth Judicial Circuit between October 1, 2006 and June 30, 2009, which requires delinquency courts to waive the fees required by s. 985.2311, F.S., when a parent successfully completes a parenting class approved by the Juvenile Justice Accountability Commission.

²⁸ Section 985.2311(3), F.S.

²⁹ Section 985.2311(4), F.S.

Participation in a parenting class is voluntary and the parent must pay for the cost of the class. A parent may only have fees waived once.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is required to evaluate the pilot program and to submit a report to the Legislature, Governor, and department on September 30, 2007, and annually thereafter during the pilot period. Data required to be reported by the OPPAGA includes the total amount of fees waived under the pilot, the number of successful parenting class completions, and recidivism statistics.

Placement of Committed Youth

When a court commits a delinquent, it must specify a restrictiveness level,³⁰ but it may not select a program within the level.³¹ Instead, the DJJ is responsible for placing the youth in a program within the court-ordered restrictiveness level. In order to select a program, the department enters the following information into the Juvenile Justice Information System (JJIS):

- The restrictiveness level ordered by the court.
- Whether the youth needs any of the following services: pregnancy services; restitution services; a staff, fence, or hardware secure facility; sex offender treatment; behavior overlay services; residential substance abuse overlay services; intensive mental health services; special needs mental health services; mental health overlay services; developmentally disabled services; social and life skills; vocational training; educational services; residential substance abuse treatment; or specialized mental health services.
- Whether any of the following disqualifying factors apply to the youth: documented arson history; extremely aggressive behavior; DSM IV diagnosis; psychotropic medications; IQ below 70; serious habitual offender; intensive residential treatment; asthma; diabetes; heart condition; seizures; sickle cell anemia; cancer; sexually transmitted disease; tuberculosis; or pregnancy.

Based on this information, the JJIS produces a list of programs that meet the youth's needs and for which the youth has no disqualifying factors. The JJIS also indicates the expected wait list for the listed programs. The commitment manager selects a program from the JJIS list after considering which program best meets the youth's needs and which is closest to the youth's home.

During the 2006 Interim, the House Juvenile Justice Committee conducted a project that reviewed the issue of statutorily affording judges the discretion to select particular commitment programs for youth. This issue had been considered by the Legislature in three bills filed during the 2003 and 2005 Regular Sessions.³²

The interim project report³³ indicates that a survey of Florida's 81 juvenile delinquency judges was conducted to obtain feedback regarding whether they desire judicial discretion to select commitment program. Out of 41 judges responding, more than half (23 judges or 56 percent) believed that statute should be amended to afford judicial discretion because it would assist in insuring that placements are based on youth needs and the most effective programming available, rather than on program availability and budgetary concerns.³⁴

³⁰ See Section 985.03(46), F.S. (defining the minimum-, low-, moderate-, high-, or maximum-risk restrictiveness levels).

³¹ See *Department of Juvenile Justice v. J.R.*, 716 So.2d 872 (Fla 1st DCA 1998) and *Department of Juvenile Justice v. E.R., J.R., M.C., and C.A.*, 724 So.2d 129 (Fla 3rd DCA 1998) (holding that the court has no statutory authority to require placement of a committed youth in a particular facility).

³² See HB 1741 and SB 1900 (2003) and HB 1917 (2005).

³³ *Judicial Discretion to Select Juvenile Commitment Programs*, House of Representatives Juvenile Justice Committee, January 2006, pp. 4-6.

³⁴ *Judicial Discretion to Select Juvenile Commitment Programs* at pp. 6, 9, 11.

Impact of bill:

The bill creates a pilot program for the period of September 1, 2006 through July 1, 2010, in the First, Eleventh, Thirteenth, and Twentieth Judicial Circuits, which authorizes judges to select particular commitment programs within a restrictiveness level. Under the pilot, a judge may only select a program: (a) for which the DJJ or the judge has found that the youth satisfies program eligibility requirements; and (b) which has an expected wait period of 20 days or less if in the maximum-risk level or 30 days or less if in one of the four other levels, unless the judge provides reasons establishing that a program with a longer wait period is in the youth's best interest.

The OPPAGA is required to evaluate the pilot program and to submit a report on January 1, 2008, and annually thereafter, which identifies, according to judicial circuit and restrictiveness level, the following data, as it becomes available, for the pilot program period:

- The number of youth committed to the department by the delinquency court.
- The number of youth placed by the delinquency court in a program: on the JJIS list with a wait period of 20 or 30 calendar days or less, as applicable; on the JJIS list with a wait period in excess of 20 or 30 calendar days, as applicable; and that was not on the JJIS list.
- The number of youth placed in DJJ-specified commitment programs.
- The average wait period for, and the average number of days spent by youth in secure detention while awaiting placement in, delinquency court-specified commitment programs and DJJ-specified commitment programs.
- The number of youth who complete, and who are otherwise released from, delinquency court-specified commitment programs and DJJ-specified commitment programs.
- Educational achievements made by youth while participating in delinquency court-specified commitment programs and department-specified commitment programs.
- The number of youth who recidivate within six-months following completion of delinquency court-specified commitment programs and DJJ-specified commitment programs.

Further, OPPAGA's reports due in 2009 and 2010 must also contain: (a) findings by the OPPAGA, DJJ, and delinquency courts regarding the benefits and disadvantages of authorizing courts to select commitment programs; and (b) recommendations by the OPPAGA, DJJ, and delinquency courts, if found to be warranted, for amendments to current statute addressing commitment.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., related to the definition of "other person responsible for a child's welfare."

Section 2. Amends s. 985.207, F.S., relating to taking youths into custody.

Section 3. Amends s. 985.215, F.S., relating to use of detention.

Section 4. Amends s. 985.2155, F.S., relating to fiscally constrained counties.

Section 5. Amends s. 985.228, F.S., relating to orders of adjudication of delinquency.

Section 6. Amends s. 985.231, F.S., to correct cross references.

Section 7. Repeals s. 985.309, F.S., authorizing boot camps for children.

Section 8. Creates s. 985.3091, F.S., authorizing Sheriff's Training and Respect (STAR) programs.

Section 9. Amends s. 985.31, F.S., relating to serious or habitual juvenile offender programs.

Section 10. Amends s. 985.311, F.S., relating to intensive residential treatment programs.

Section 11. Amends s. 985.317, F.S., relating to literacy programs.

Section 12. Creates s. 985.3142, F.S., to proscribe failure to return from a temporary release.

Section 13. Creates s. 985.4055, F.S., to require statewide Protective Action Response rules.

Section 14. Creates s. 985.4056, F.S., to create the Juvenile Justice Accountability Commission.

Section 15. Amends s. 985.412, F.S., relating to data collection, reporting and quality assurance.

Section 16. Amends s. 958.046, F.S. to correct cross references.

Section 17. Amends s. 985.314, F.S., to correct cross references.

Section 18. Creates a pilot program for waiver of costs of supervision and care.

Section 19. Transfers research, data, and quality assurance functions to the commission.

Section 20. Creates a pilot program for judicial discretion to select commitment programs.

Section 21. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Cost of care pilot program: The bill's creation of the cost of care pilot program will result in a reduction in the amount of fees collected by the DJJ under s. 985.2311, F.S., in the 9th Judicial Circuit for the nearly three-year pilot program period. The amount of the reduction is indeterminate as the number of parents who will participate in the pilot is unknown. Current collection rates statewide appear to be just over 10% of total potential collections based on average daily population in various DJJ programs³⁵.

2. Expenditures:

Fiscally constrained counties: The House version of the GAA contains \$822,422 to continue to provide assistance for the cost of providing secure detention to Wakulla, Sumter and Highlands counties for FY 2006-07.

Boot camps/STAR programs: The House version of the General Appropriations Act (GAA) contains a reduction of \$10.5 million associated with the elimination of boot camps. Approximately \$10.6 million is provided to STAR programs for residential services and aftercare.

Judicial discretion pilot program: The DJJ has stated that the bill's creation of the judicial discretion pilot program could result in increased post-disposition secure detention costs if average wait lists for high- and maximum-risk programs increase due to judicially-specified placements; however, the department indicates that the fiscal impact for such potential increase is indeterminate because it is impossible to know how often judges will exercise placement discretion and whether judicial placements will, in fact, result in wait list increases. The DJJ states that data collection requirements

³⁵ According to data provided by the department to the Legislative Appropriations System/Planning and Budgeting Subsystem (LAS/PBS), the department estimates collections from cost of care payments to be just over \$3 million for FY 2006-07. Total potential collections based on average daily population information contained in Performance Based Budgeting documents is over \$25 million.

for the pilot program will necessitate modifications of the JJIS at a cost of \$13,000. There is no increased appropriation to the DJJ to accommodate this workload. Therefore, the agency will have to absorb the impact from within existing resources.

Cost of care pilot program. The DJJ has not indicated any increased expenditure requirements associated with the cost of care pilot program. It is likely, however, that the department will experience workload associated with the pilot.

Consolidated reporting requirements: The DJJ has not indicated any cost savings that will result from reducing current reporting requirements. It is likely, however, that the department will experience decreased workload associated with these provisions. According to the department, the OE, quality assurance, and PAM reports discussed in this bill analysis are produced by department employees in the Bureau of Quality Assurance and Office of Research and Planning and through a contract with the Justice Research Center (JRC).

Transfer of quality assurance and data and research functions: The House GAA provides \$2,288,267 for the Juvenile Accountability Commission. The House GAA includes an associated reduction of \$2,072,427 for quality assurance and data and research in the Department of Juvenile Justice.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The provisions of the bill that allow judges to detain adjudicated youth for history of failure to appear at court proceedings or for violating adjudication order conditions could increase utilization of pre-disposition detention. This could increase the cost of secure detention to counties if a significant increase in utilization actually materializes. The DJJ has not submitted an estimate of this impact to the House Fiscal Council, but an analysis of a similar proposal last session indicated an indeterminate impact³⁶. Further, DJJ representatives have recently indicated that adjudicatory and disposition hearings are held simultaneously in the majority of delinquency cases.³⁷ The bill's provisions would have no effect on these cases. Therefore, the impact is anticipated to be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private contract providers could incur additional costs associated with staff turnover due to the bill's requirement that staff receive PAR certification within the first 90-days of employment, rather than 180-days as currently specified in DJJ policy. The House version of the GAA provides a price level increase of \$16 million for contract providers which could be used to offer better pay and benefits to attract more qualified workers.

Some private providers may lose contracts with the department if they are unable to meet acceptable quality assurance standards within the time frames specified by the bill.

D. FISCAL COMMENTS:

³⁶ Department of Juvenile Justice bill analysis on strike all amendment to HB 1863 prepared April 19, 2005.

³⁷ Telephone conversation with Department of Juvenile Justice staff on 3/28/2006.

The department has not submitted a fiscal analysis of the provisions of this bill relating to PAR requirements, STAR programs, the transfer of department research, data, and quality assurance responsibilities to the commission, and the cost of care pilot program

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

There is the potential for increased utilization of predisposition secure detention which would result in increased costs to counties. The expected impact is indeterminate but most likely insignificant. Also, the bill is a criminal law in that it deals with options available to the judiciary to respond to individuals who have been adjudicated delinquent for violating the criminal laws of this state. Therefore, the bill would appear to be exempt from the provisions of Article VII, Section 18(a).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The department is required to adopt rules to implement STAR programs, to establish statewide PAR regulations, and to establish criteria applicable to terminations of department-operated and contracted programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Juvenile Justice Committee adopted three amendments to this bill on February 8, 2006, which accomplished the following: (a) amended s. 985.412, F.S., to revise DJJ annual reporting requirements; (b) amended ss. 985.207, 985.215, and 985.228, F.S., to enable a law enforcement office to take a youth into custody for violating adjudication order conditions and to enable a court to securely detain an adjudicated youth until disposition if he or she has a history of willfully failing to appear in prior delinquency court proceedings or has violated adjudication order conditions; and (c) removed the bill's section that amended s. 985.3141, F.S., to make a youth's willful failure to return from temporary release a third degree felony.

The Criminal Justice Appropriations Committee adopted a strike everything amendment to this bill on April 11, 2006, which added provisions that:

- Revise the definition of a "fiscally constrained county."
- Proscribe a youth's failure to return from a temporary commitment release.
- Eliminate the statutory authority for juvenile boot camps and authorize STAR programs.
- Create the Juvenile Justice Accountability Commission and assign it duties.
- Transfer DJJ responsibilities for research and data and quality assurance review to the commission.
- Require the DJJ to adopt rules on use of force and physical restraint.
- Require direct care staff to have received PAR certification within 90 days of employment.
- Create a pilot project in the 9th Judicial Circuit to waive cost of care fees for parents who voluntarily enter parent training programs at their own expense.
- Create a pilot project in the 1st, 11th, 13th, and 20th Judicial Circuits to permit courts to select commitment programs for youth.

The strike everything amendment also removed provisions of the bill that made statutory home detention with electronic monitoring subject to appropriation.