

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 949 Juvenile Justice Education and Workforce Programs

**SPONSOR(S):** Criminal Justice Subcommittee; Baxley and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N, As CS	Williams	Cunningham
2) Appropriations Committee			
3) Education Committee			
4) Judiciary Committee			

### SUMMARY ANALYSIS

The Florida Department of Juvenile Justice (DJJ) oversees at-risk and adjudicated youth in prevention, detention, residential, nonresidential, day treatment, and rehabilitation programs throughout the state. Education is a vital component of each of these programs.

Section 1003.52, F.S., sets forth how educational services must be provided in DJJ programs and establishes the educational expectations for DJJ youth in such programs. The bill repeals this statute in its entirety and creates s. 1003.515, F.S., entitled "The Florida Juvenile Justice Education Act" (Act). The purpose of the Act is to provide performance-based outcome measures and accountability for juvenile justice education programs and to improve academic and workforce-related outcomes for adjudicated and at-risk youth. The Act:

- Imposes requirements on school districts, or private providers contracted by a school district, that offer education services to youth in juvenile justice education programs;
- Requires school districts and private providers to ensure that specified youth participate in a juvenile justice education program;
- Imposes requirements on juvenile justice residential and nonresidential educational programs;
- Requires the Department of Education (DOE) to identify residential and nonresidential juvenile justice education programs, excluding detention programs, as having a high, adequate, or failing performance rating, and provides guidance in how to determine such rating;
- Provides accountability measures for juvenile justice educational programs;
- Provides requirements for youth exiting an educational program; and
- Requires school districts and private providers, in collaboration with others, to develop an education transition plan which will assist the youth in successful reintegration into the community.

The bill amends s. 985.46, F.S., to require that an individual transition plan be developed for each youth upon placement in a commitment program and provided to the youth upon release. The transition plan must include an education transition plan as well as information regarding relevant delinquency treatment and intervention services available upon release.

The bill substantially re-writes s. 985.618, F.S., relating to DJJ education and workforce-related programs, to require DJJ, in collaboration with DOE, to verify that each juvenile justice education program, at a minimum, provides access to virtual courses and encourages virtual counseling, provides instruction from credentialed individuals during specified time periods, provides specialized instruction to accommodate students with disabilities, and expends funds in a manner that directly supports the attainment of successful student outcomes and that allows youth to engage in real work situations whenever possible.

The bill may have a fiscal impact on state government. See fiscal comments.

The bill is effective upon becoming a law.

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

STORAGE NAME: h0949a.CRJS

DATE: 1/30/2012

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background - DJJ Education Programs**

The Florida Department of Juvenile Justice (DJJ) oversees at-risk and adjudicated youth in prevention, detention, residential, nonresidential, day treatment, and rehabilitation programs throughout the state. Education is a vital component of each of these programs. In fact, the Legislature has found that education is the single most important factor in the rehabilitation of adjudicated youth.<sup>1</sup>

#### Section 1003.52, Florida Statutes

Section 1003.52, F.S., sets forth how educational services must be provided in DJJ programs and establishes the educational expectations for DJJ youth in such programs. The significant portions of this statute are outlined below.

The Department of Education (DOE) is the lead agency for juvenile justice education programs, curriculum, support services, and resources; however, district school boards are responsible for actually providing educational services to youth in juvenile justice programs.<sup>2</sup> Educational services consist of basic academic, career, or exceptional curricula that support treatment goals and reentry, and that may lead to the completion of a high school diploma or its equivalent.<sup>3</sup> These services can be provided by the district school board itself or by a private provider through a contract with the board.<sup>4</sup>

District school boards must recruit and train teachers who are interested, qualified, or experienced in educating students in juvenile justice programs.<sup>5</sup> Teachers assigned to educational programs in juvenile justice settings in which the district school board operates the educational program must be selected by the district school board in consultation with the director of the juvenile justice facility.<sup>6</sup>

Generally, student participation in educational programming is mandatory.<sup>7</sup> DOE, with the assistance of the school districts, is required to select a student assessment instrument and protocol for measuring student learning gains and student progression.<sup>8</sup> Progress monitoring plans must be developed for students who score below the specified levels in reading, writing, and math.<sup>9</sup> These plans must address academic, literacy, and life skills and must include provisions for intensive remedial instruction in areas of weakness.<sup>10</sup> Each district school board must maintain an academic record of each student enrolled in a juvenile justice program.<sup>11</sup>

DOE, in consultation with DJJ, district school boards, and contracted providers, must establish quality assurance standards for educational programs in DJJ commitment facilities.<sup>12</sup> These standards are

---

<sup>1</sup> Section 1003.52(1), F.S.

<sup>2</sup> Section 1003.52(1), (3), and (4), F.S.

<sup>3</sup> Section 1003.52(5), F.S.

<sup>4</sup> Section 1003.52(11), F.S.

<sup>5</sup> Section 1003.52(10), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Students of noncompulsory school-attendance age who have not received a high school diploma or its equivalent must participate in educational programs unless the student files a formal declaration of his or her intent to terminate school enrollment and is given the opportunity to take the GED test and attain a high school diploma prior to release from a facility. Students with a high school diploma or its equivalent and who are not employed must participate in workforce development or other career or technical education or college courses. Section 1003.52(6), F.S.

<sup>8</sup> Section 1003.52(3)(b), F.S. DOE selected the Basic Achievement Skills Inventory as the assessment instrument to assess the learning gains of juvenile justice students in grades 3 through 12 in reading, math, and language arts. OPPAGA Report 10-07, (<http://www.oppaga.state.fl.us/ReportsYearList.aspx?yearID=22>)(last visited on January 20, 2012).

<sup>9</sup> Section 1003.52(7), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 1003.52(8), F.S.

<sup>12</sup> Section 1003.52(15)(a), F.S.

used to rate a district school board's performance, both as a provider and as a contractor.<sup>13</sup> DOE must also develop a quality assurance review process to assess each educational program.<sup>14</sup> Assessments are performed through site visits.<sup>15</sup> If a district school board fails to meet the minimum thresholds for the standards, as established by DOE, the board will be given 6 months to achieve compliance.<sup>16</sup> If still below the minimum thresholds after 6 months has passed, DOE must sanction the board in accordance with rules adopted by the State Board of Education.<sup>17</sup> If a provider under contract with a district school board fails to meet the minimum thresholds, the board must cancel the provider's contract unless compliance is achieved within 6 months or unless there are documented extenuating circumstances.<sup>18</sup>

Each district school board must negotiate a cooperative agreement with DJJ regarding the delivery of educational programming to DJJ youth. These agreements must include provisions that address certain issues, such as:

- Curriculum and delivery of instruction;
- Classroom management procedures and attendance policies;
- Procedures for provision of qualified instructional personnel;
- Improving skills in teaching and working with juvenile delinquents;
- Transition plans for students moving into and out of juvenile facilities; and
- Strategies for correcting and deficiencies found through the quality assurance process.<sup>19</sup>

DOE and DJJ must each designate a coordinator to resolve issues not addressed by the district school boards and to provide each department's participation in:

- Training, collaborating, and coordinating with DJJ, district school boards, educational contract providers, and juvenile justice providers, whether state-operated or contracted;
- Collecting and reporting information on the academic performance of students in juvenile justice programs;
- Developing academic and career protocols that provide guidance to district school boards and providers in educational programming; and
- Prescribing the roles of program personnel and school district or provider collaboration strategies.<sup>20</sup>

DJJ and the DOE must develop a cooperative agreement and plan for juvenile justice education service enhancement, which must be submitted to the Secretary of Juvenile Justice and the Commissioner of Education on an annual basis.<sup>21</sup>

After consulting with the district schools boards and local providers, DOE and DJJ must report annually to the Legislature on the progress towards developing effective educational programs for youth in the juvenile justice system. This report must include the results of the quality assessment reviews, including recommendations for system improvement.<sup>22</sup>

### 2010 OPPAGA Report

In 2010, the Office of Program Policy Analysis & Government Accountability (OPPAGA) issued a report entitled, "Youth Entering the State's Juvenile Justice Programs Have Substantial Educational Deficits; Available Data is Insufficient to Assess Learning Gains of Students."<sup>23</sup> This report examined educational services provided to youth in DJJ residential and day treatment programs. In sum,

---

<sup>13</sup> Section 1003.52(15)(a), F.S.

<sup>14</sup> Section 1003.52(15)(b), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 1003.52(15)(c), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Section 1003.52(13), F.S.

<sup>20</sup> Section 1003.52(1), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 1003.52(19), F.S.

<sup>23</sup> OPPAGA Report 10-07, (<http://www.oppaga.state.fl.us/ReportsYearList.aspx?yearID=22>)(last visited on January 20, 2012).

OPPAGA found that most students entering juvenile justice programs were older, academically behind their peers, and were likely to have had attendance problems at school.<sup>24</sup> Additionally, teachers at juvenile justice facilities tended to have less experience than those at traditional schools, and were more likely to have temporary teaching certificates and to teach subject areas and grade levels for which they lacked certification.<sup>25</sup> Most importantly, OPPAGA found that DOE had not collected sufficient information to assess the learning gains (or lack thereof) of students in juvenile justice programs.<sup>26</sup> Only 48 of the 141 programs (34%) reported complete information for at least half of their students.<sup>27</sup> For those programs that did report data, the nature of the assessment instrument made it difficult to determine whether students were making appropriate educational progress.<sup>28</sup>

### DJJ Education Program Outcomes

DOE has provided data on youth released from DJJ programs over several years using information from the Florida Education and Training Placement Information Program (FETPIP).<sup>29</sup> DOE tracked youth in DJJ residential programs to determine occupational, educational, and subsequent judicial placement in the years following release from the program. To provide context, DOE provided the same outcome information for high school dropouts and graduates. The chart below shows that youth released from DJJ are returning to school at progressively lower rates over time. In addition, DJJ youth are similar to dropouts in that low percentages enroll in postsecondary education. Youth released from DJJ were also less likely to be employed than dropouts or high school graduates. Finally, DJJ youth, following release, are more likely to be incarcerated as adults than dropouts or high school graduates. Of those who were later incarcerated by the Department of Corrections, they were less likely to earn full time equivalent wages after leaving the DJJ program.

### **Information on DJJ Youth in Comparison to School Dropouts and High School Graduates**

	Year Students Left Or Graduated 2006-07			Year Students Left or Graduated 2007-08		
	DJJ Leavers	Dropouts	HS Grads	DJJ Leavers	Dropouts	HS Grads
1. Number of students	7,395	25,144	127,258	6,041	19,640	131,128
2. Number and percent who returned to HS or MS at any point following release	2430	7,879	NA	634	5,471	NA
	33%	31%		10%	28%	
3. Number and percentage of DJJ Leavers who received a GED	1,557	NA	NA	1,288	NA	NA
	21%			21%		
4. Number and percent who enrolled in Postsecondary ED in the year following their release - continuing education	390	1,520	80,057	364	1,274	82,741
	0%	6%	63%	6%	6%	63%
5. Number and percent who were employed in the year after release	1,502	9,234	69,117	866	5,437	62,890
	20%	37%	54%	14%	28%	48%

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Because the Basic Achievement Skills Inventory is a norm-referenced test, students' academic gains must be compared to those achieved by the students used to provide the normed performance expectations. OPPAGA noted that while national norms are available for this test, they are inappropriate to use to interpret the academic gains of juvenile justice students. *Id.*

<sup>29</sup> See, <http://www.fldoe.org/fetpip/> (last visited on January 20, 2012).

	Year Students Left Or Graduated 2006-07			Year Students Left or Graduated 2007-08		
	DJJ Leavers	Dropouts	HS Grads	DJJ Leavers	Dropouts	HS Grads
6. Of those who were employed, number and percent who were employed with full time equivalent wages in the year after their release <sup>30</sup>	231 15%	2,011 22%	15,032 22%	135 16%	1,239 28%	10,613 17%
7. Number and percent who were later incarcerated in a DOC facility (Followed through 2009-10)	1,197 16%	874 3%	271 0%	600 10%	503 3%	159 0%
8. Of those that were later incarcerated in a DOC facility, the number and percent employed in the year after release with full time equivalent wages <sup>1</sup>	20 2%	16 2%	29 11%	3 0%	2 0%	8 5%

Source: Florida Education and Training Placement Information Program

\* Percentages less than .50% are rounded to (whole percentages) 0%.

### Juvenile Justice Education Workgroup

The Juvenile Justice Education Workgroup was created in the summer of 2011 to bring together stakeholders in juvenile justice education. The workgroup heard testimony concerning youth education outcomes in juvenile justice facilities. Cognizant of the significant challenges these youth will face in obtaining gainful employment, the workgroup recommended a revised accountability structure to evaluate the effectiveness of DJJ educational programs. In particular, the workgroup recommended evaluating DJJ education programs on the following: youth attainment of industry certifications in targeted, high-demand and high-wage fields; continuing education at the secondary or postsecondary level; job placement or self-employment; and attainment of postsecondary credit.<sup>31</sup>

### **Effect of the Bill**

#### The Florida Juvenile Justice Education Act

The bill repeals s. 1003.52, F.S., in its entirety. The bill creates s. 1003.515, F.S., entitled “The Florida Juvenile Justice Education Act” (Act). The purpose of the Act is to provide performance-based outcome measures and accountability for juvenile justice education programs; and to improve academic and workforce-related outcomes for adjudicated and at-risk youth.

The bill provides provide that the term “juvenile justice education programs” has the same meaning as provided in s. 1003.01(11)(a), F.S., which defines the term, in part, as “programs or schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs, for a school year comprised of 250 days of instruction distributed over 12 months.”

#### *Education Program Providers - Requirements*

The bill requires a school district or private provider contracted by a school district to offer education services to youth in a juvenile justice education program to:

- Provide rigorous and relevant academic and workforce-related curricula that will lead to industry certifications in an occupational area of high demand identified in the Industry Certification Funding list adopted by the State Board of Education, or articulate to secondary or postsecondary-level coursework, as appropriate.
- Support state, local, and regional economic development demands.

<sup>30</sup> Full-time is determined by the wages equal to or greater than “minimum wages \*13 weeks\* 40 hours.” If the wage amount is equal to or greater than this number, FETPIP considers the individual full-time for the quarter.

<sup>31</sup> See, The Florida Senate, Committee on Education Pre-K – 12. Delivery of Education Services in the Department of Juvenile Justice Facilities. Interim Report 2012-119. October, 2011.

- Make high-wage and high-demand careers more accessible to adjudicated and at-risk youth.
- Reduce rates of recidivism for adjudicated youth.
- Provide access to the appropriate courses and instruction to prepare youth for a standard high school diploma, a special diploma, or a high school equivalency diploma, as appropriate.
- Provide access to virtual education courses that are appropriate to meet the requirements of academic or workforce-related programs and the requirements for continuing education specified in the youth's transition and postrelease plans.
- Provide opportunities for earning credits toward high school graduation or credits that articulate to postsecondary education institutions while the youth are in residential and nonresidential juvenile justice facilities.
- Ensure that the credits and partial credits earned by the youth are transferred and included in the youth's records as part of the transition plan.
- Ensure that the education program consists of the appropriate academic, workforce-related, or exceptional education curricula and related services that directly support performance outcomes, which must be specified in each youth's education transition plan component.
- Ensure that youth in a program for less than 40 days receive employability, life skills, and academic remediation, as appropriate. In addition, counseling and transition services must be provided which mitigate the youth's identified risk factors and prepare the youth for a successful reintegration into the school, community, and home settings.
- Maintain an academic record for each youth who is enrolled in a juvenile justice facility, as required by s. 1003.51, and ensure that the coursework, credits, partial credits, occupational completion points, and industry certifications earned by the youth are transferred and included in the youth's transition plan.

The bill requires school districts and private providers to ensure that the following youth participate in a juvenile justice education program:

- Youth who are of compulsory school attendance age.
- Youth who are not of compulsory school attendance age and who have not received a high school diploma or its equivalent, if the youth is in a residential or nonresidential juvenile justice program. Such youth must participate in the education program and participate in a workforce-related education program that leads to industry certification in an occupational area of high demand.<sup>32</sup>
- Youth who have attained a high school diploma or its equivalent and who are not employed. Such youth must participate in a workforce-related education program that leads to employment in an occupational area of high demand. Such youth may enroll in a state postsecondary institution to complete the workforce-related education program and are exempt from the payment of tuition and fees pursuant to s. 1009.25(1)(g), F.S.

#### *Educational Programming - Requirements*

The bill requires each juvenile justice residential and nonresidential education program to, in collaboration with the regional workforce board or economic development agency and local postsecondary institutions, determine the appropriate occupational areas for the program. Juvenile justice education programs must also:

- Ensure that rigorous academic and workforce-related coursework is offered and meets or exceeds appropriate state-approved subject area standards, and results in the attainment of industry certification and postsecondary credit, when appropriate;
- Ensure instruction from individuals who hold industry credentials in the occupational areas in which they teach;
- Maximize the use of private sector personnel;
- Use strategies to maximize the delivery of virtual instruction;
- Maximize instructional efficiency;

---

<sup>32</sup> The bill specifies that this requirement does not limit the rights of students with disabilities, as defined under the Individuals with Disabilities Education Act, who are not of compulsory school attendance age and who have not received a high school diploma to receive a free, appropriate public education in accordance with their individualized needs.

- Provide opportunities to earn weighted or dual enrollment credit for higher-level courses;
- Promote credit recovery; and
- Provide instruction that results in competency, certification, or credentials in workplace skills.

#### *Educational Programming - Performance Ratings and Outcomes*

The bill requires DOE to identify each residential and nonresidential juvenile justice education program, excluding detention programs, as having a high, adequate, or failing performance rating as defined by the State Board of Education. The bill requires the performance ratings to be weighted based on the level of rigor associated with attaining a specified outcome. The bill requires DOE to evaluate the following elements in determining the performance rating, which differ based on the age-appropriate needs of the youth.

For youth 14 years of age or younger:

- Achievement of academic progress in reading and mathematics,<sup>33</sup> as measured by the statewide common pre- and post-assessment adopted by the DOE for use in juvenile justice education programs, and participation in continuing education upon release from a juvenile justice residential or nonresidential program.
- Completion of secondary coursework and participation in continuing education upon release from a juvenile justice residential or nonresidential program.
- Attainment of occupational completion points<sup>34</sup> in an occupational area of high demand identified in the Industry Certification Funding list<sup>35</sup> adopted by the State Board of Education and participation in continuing education upon release from a juvenile justice residential or nonresidential program.
- Attainment of an industry certification in an occupational area of high demand identified in the Industry Certification Funding list, if available and appropriate, and participation in continuing education upon release from a juvenile justice residential or nonresidential program.

For youth 15 years of age or older:

- Achievement of academic progress in reading and mathematics,<sup>36</sup> as measured by the statewide common pre- and post-assessment adopted by the department for use in juvenile justice education programs, and participation in continuing education upon release from a juvenile justice residential or nonresidential program.
- Earning secondary or postsecondary credit upon release from a juvenile justice facility and participation in continuing education upon release from a juvenile justice residential or nonresidential program.
- Attainment of a high school diploma or its equivalent and participation in continuing education at the postsecondary level upon release from a juvenile justice residential or nonresidential program.
- Attainment of a high school diploma or its equivalent and obtaining employment.
- Attainment of an industry certification in an occupational area of high demand identified in the Industry Certification Funding list and obtaining employment.
- Attainment of occupational completion points in an occupational area of high demand and obtaining employment.
- Attainment of occupational completion points in an occupational area of high demand identified in the Industry Certification Funding list and, upon release from a juvenile justice residential or nonresidential program, participation in continuing education in order to complete the industry certification in that occupation.

<sup>33</sup> Section 1003.52(3)(b), F.S., requires DOE to select a valid assessment tool to measure learning gains in mathematics and reading.

<sup>34</sup> Occupational Completion Points (OCPs) are selected sets of student performance standards that fall between established occupational completion points, as identified in vocational job preparatory course descriptions. These selected standards guide the student in completing a modified program and developing marketable skills. *See*, <http://www.fldoe.org/workforce/programs/ss5.asp>. (last visited on January 20, 2012).

<sup>35</sup> The Industry Certification Funding List is available at: <https://www.fldoe.org/workforce/fcpea/pdf/1011icfl.pdf>. (last visited on January 20, 2012).

<sup>36</sup> Section 1003.52(3)(b), F.S., requires DOE to select a common assessment tool to measure academic progress in mathematics and reading.

For purposes of determining performance ratings, juvenile justice residential and nonresidential education programs, excluding detentions centers, are held accountable for student outcomes for no more than 6 months after the youth is released from the residential or nonresidential program.

The bill requires DOE to make available a common student pre- and post-assessment to measure the academic progress in reading and mathematics of youth in juvenile justice education programs by September 1, 2012.

#### *Educational Programming – Accountability*

The bill also requires DOE, in collaboration with DJJ, to:

- Monitor the education performance of youth in juvenile justice facilities.
- Prohibit school districts or private providers that have failing performance ratings from delivering education services.
- Verify that a school district is operating or contracting with a private provider to deliver education services.

If a school district's juvenile justice residential or nonresidential program earns two failing performance ratings in any 3-year period, the school district must enter into a contract with a school district or private provider that has an adequate or higher performance rating to deliver education services to the youth in the program.

The bill prohibits school districts that contract with a private provider for educational services from dictating personnel decisions if the contracted provider maintains a high performance rating. The bill requires academic instructional personnel to be certified by DOE but permits non-degreed teachers of career education to be certified by a local school district under s. 1012.39 and be designated as teaching out-of-field. In addition, an instructor who is deemed to be an expert in a specific field may be employed under s. 1012.55(1), F.S.

#### *Exiting an Educational Program*

When determining educational placement for a youth who enrolls in a school district upon release from a juvenile justice program, the bill requires the school district to adhere to the transition plan established pursuant to s. 985.46(6), F.S.

The bill requires youth exiting an educational program to:

- Attain an industry certification in a targeted occupation;
- Enroll in a program to complete an industry certification;
- Gain employment and earning full-time wages; or
- Enroll in and continuing education based on the youth's transition and post-release plan.

#### *Education Transition Plans*

The bill requires school districts and private providers, in collaboration with others, to develop an education transition plan which will assist the youth in successful reintegration into the community. The development of this plan must begin upon a youth's placement in a juvenile justice program and must include academic and workforce services to be provided during the youth's stay in the program and upon the youth's release. Individuals responsible for reintegration must coordinate activities to ensure that the education transition plan component is successfully implemented and the youth are provided access to support services that will sustain the youth's success once he or she is no longer under the supervision of DJJ.

The bill requires that an educational transition plan component be incorporated into the transition plan required by s. 985.46(6), F.S.

### *Educational Programs - Funding*

In regards to educational program funding, the bill provides the following:

- Youth who are participating in GED preparation programs while under the supervision of DJJ must be funded at the basic program cost factor for juvenile justice programs in the Florida Education Finance Program (FEFP).
- Juvenile justice education programs operated through a contract with DJJ and under the purview of DOE's quality assurance standards and performance outcomes must receive the appropriate FEFP funding for juvenile justice programs.
- A district school board must fund the education program in a juvenile justice facility at the same or higher level of funding for equivalent students in the district school system based on the funds generated through FEFP and funds allocated from federal programs.
- District school boards must request an alternative full-time equivalent (FTE) survey for juvenile justice programs experiencing fluctuations in student enrollment.
- The State Board of Education must prescribe rules relating to FTE count periods which must be the same for juvenile justice programs and other public school programs.

Section 1011.62(1)(f), F.S., (Funds for operation of schools) provides that Effective with the 1999-2000 fiscal year, funding on the basis of FTE membership beyond the 180-day regular term shall be provided in the FEFP only for students enrolled in juvenile justice education programs or in education programs for juveniles placed in secure facilities or programs under s. 985.19, F.S. The bill amends this statute to require such funding to be provided to the FEFP effective with the 2012-2013 fiscal year.

### *Rulemaking Authority*

The bill requires the State Board of Education to prescribe rules relating to FTE count periods which must be the same for juvenile justice programs and other public school programs.

The bill also requires the State Board of Education to collaborate with DJJ, the Department of Economic Opportunity, school districts and private providers to adopt rules to administer "The Florida Juvenile Justice Education Act."

### *Fee Exemption*

The bill amends s. 1009.25, F.S., (Fee exemptions), to conform to the payment exemption for tuition and fees of state postsecondary institutions for specified youth under s. 1003.515(5)(b)3., F.S.

### Chapter 985, F.S. - Transition Plans

Conditional release is defined as the care, treatment, help, and supervision provided to a juvenile released from a residential commitment program which is intended to promote rehabilitation and prevent recidivism.<sup>37</sup> Section 985.46, F.S., requires each juvenile committed to a residential commitment program to be assessed to determine the need for conditional release services upon release from the commitment program.

The bill amends s. 985.46, F.S., to require that an individual transition plan be developed for each youth upon placement in a commitment program and provided to the youth upon release. The transition plan must be developed in collaboration with the youth, commitment program representatives, school district personnel, and conditional release or post-commitment probation program representatives, if appropriate. The transition plan must include an education transition plan as well as information regarding relevant delinquency treatment and intervention services available upon release.

The bill requires the transition plan for youth released on conditional release or post commitment probation status to be incorporated into the conditions of release. For youth not released on conditional release or post commitment probation status, the transition plan must be explained to the youth and provided to the youth upon release, with all necessary referrals made 30 days before the youth exits the program.

---

<sup>37</sup> Section 985.03, F.S.

## Chapter 985, F.S. – Education and Workforce-Related Programs

Section 985.618, F.S., currently contains a variety of provisions relating to DJJ education and workforce-related programs. These provisions include:

- Legislative findings;
- Requirements that DJJ have specified objectives when adopting or modifying master plans for juvenile work programs and educational and career training programs;
- Guidelines for the operation of juvenile education and career-related programs;
- Guidelines for evaluating juvenile educational and career-related programs; and
- Authorization for DJJ to contract with the private sector for substantial involvement in juvenile industry programs.

The bill substantially re-writes s. 985.618, F.S. In regards to legislative intent, the bill provides that the Legislature intends for youth in juvenile justice programs to be provided a quality education that includes workforce-related skills that lead to continuing education or meaningful employment, or both, and that results in reduced rates of recidivism.

The bill requires DJJ, in collaboration with DOE, to annually verify that each juvenile justice education program, at a minimum:

- Provides access to virtual course offerings that maximize learning opportunities for youth.
- Encourages access to virtual counseling to address the educational and workforce needs of adjudicated youth.
- Provides instruction from individuals who hold industry credentials in the occupational areas in which they teach.
- Ensures student access to instruction during evenings and weekends.
- Considers, before placement, the age, interests, prior education, training, work experience, emotional and mental abilities, treatment needs, and physical capabilities of the youth and the duration of the term of placement imposed.
- Provides specialized instruction, related services, accommodations, and modifications as are necessary to ensure the provision of a free, appropriate public education for students with disabilities.
- Expends funds in a manner that directly supports the attainment of successful student outcomes as specified in s. 1003.515(7) and that allows youth to engage in real work situations whenever possible.

The bill also requires DJJ to collaborate with DOE, the Department of Economic Opportunity, school districts, and private providers to adopt rules to administer s. 985.618, F.S.

## Chapter 985 – Quality Assurance and Cost Effectiveness

The bill amends s. 985.632, F.S., to require DOE to ensure that there is accurate cost accounting for education operated by the school districts, including programs operated by contracted private providers.

The bill requires that juvenile justice education program effectiveness be determined by implementing systematic data collection, data analysis, and education and workforce-related program evaluations pursuant to ss. 985.632 and 1003.515, F.S. The evaluation of the juvenile justice education and workforce-related programs shall be based on the performance outcomes provided in s. 1003.515(7), F.S.

The bill requires DJJ, in collaboration with DOE, school districts, and private juvenile education program providers, to submit an annual report to the Legislature, beginning December 31, 2013, containing the education performance outcomes of youth in juvenile justice education programs. The report must:

- Delineate the performance outcomes of youth in the state, in each school district's juvenile justice education program, and for each private provider's juvenile justice education program,

including the performance outcomes of all major student populations and genders, as determined by DOE.

- Address the use and successful completion of virtual instruction courses and the successful implementation of transition and reintegration plans.
- Include an analysis of the performance of youth over time, including, but not limited to, additional education attainment, employment, earnings, industry certification, and rates of recidivism.
- Provide recommendations for improving performance outcomes and for additional cost savings and efficiencies.

#### Conforming Changes

The bill amends ss. 985.03, F.S., (definitions); 985.721, (escapes from secure detention or residential commitment facility); 1001.42, (powers and duties of district school board); 1002.20, (K-12 student and parent rights); 1002.45, (virtual instruction programs); 1003.01, (definitions); and 1011.62, F.S., (funds for operation of schools) to conform those sections of statute to the changes made by the bill.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 985.03, F.S., relating to definitions.

Section 2. Amends s. 985.46, F.S., relating to conditional release.

Section 3. Amends s. 985.618, F.S., relating to educational and career-related programs.

Section 4. Amends s. 985.632, F.S., relating to quality assurance and cost-effectiveness.

Section 5. Amends s. 985.721, F.S., relating to escapes from secure detention or residential commitment facility.

Section 6. Amends s. 1001.42, F.S., relating to powers and duties of district school board.

Section 7. Amends s. 1002.20, F.S., relating to K-12 student and parent rights.

Section 8. Amends s. 1002.45, F.S., relating to virtual instruction programs.

Section 9. Amends s. 1003.01, F.S., relating to definitions.

Section 10. Creates s. 1003.515, F.S., relating to The Florida Juvenile Justice Education Act.

Section 11. Repeals s. 1003.52, F.S., relating to educational services in Department of Juvenile Justice programs.

Section 12. Amends s. 1009.25, F.S., relating to fee exemptions.

Section 13. Amends s. 1011.62 F.S., relating to funds for operation of schools.

Section 14. Provides an effective date upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill provides that if a school district's juvenile justice residential or nonresidential program earns two failing performance ratings in any 3-year period, the school district must enter into a contract with a school district or private provider that has an adequate or higher performance rating

to deliver education services to the youth in the program. As a result, high-performing school districts may experience a positive revenue impact.

The bill provides that youth who have attained a high school diploma or its equivalent and who are not employed, and who have been ordered by the court to participate in a juvenile justice residential program, shall be exempt from the payment for tuition and fees of state postsecondary institutions, if the youth enrolls in such institution. As a result, state postsecondary institutions may experience a negative revenue impact.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that if a school district's juvenile justice residential or nonresidential program earns two failing performance ratings in any 3-year period, the school district must enter into a contract with a school district or private provider that has an adequate or higher performance rating to deliver education services to the youth in the program. As a result, low-performing providers may experience a reduction in revenue, while high-performing providers may experience a positive fiscal impact.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>38</sup> Rulemaking authority is delegated by the Legislature<sup>39</sup> through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"<sup>40</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>41</sup> To adopt a rule an agency must have a general grant of authority

<sup>38</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So.2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>39</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>40</sup> Section 120.52(17), F.S.

<sup>41</sup> Section 120.54(1)(a), F.S.

to implement a specific law by rulemaking.<sup>42</sup> The grant of rulemaking authority itself need not be detailed.<sup>43</sup> The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>44</sup>

The bill requires DJJ, in consultation with DOE, the Department of Economic Opportunity, school districts, and private providers, to adopt rules to administer s. 985.618, F.S. The bill requires the State Board of Education to prescribe rules relating to FTE count periods which must be the same for juvenile justice programs and other public school programs. The bill also provides rulemaking authority to the State Board of Education in collaboration with DJJ, the Department of Economic Opportunity, school districts and private providers to administer “The Florida Juvenile Justice Education Act.” This authority appears to be adequate under ch. 120, F.S.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The bill creates a new s.1003.515, F.S., relating to The Florida Juvenile Justice Education Act. The following drafting notes apply to this section of the bill:
  - The bill uses inconsistent terminology when referring to the juvenile justice educational programs. For example, the phrase “juvenile justice education program” is sometimes referred to as “programs” or “education program.” This could cause confusion because various statutes within ch. 985, F.S., refer to other, non-education related juvenile justice programs as “programs.”
  - The bill requires juvenile justice education programs to ensure student access to instruction during evenings and weekends. Day treatment programs do not currently operate at such times. In addition, school districts which providers may use to provide educational services to youth may also not be accessible during such times.
  - The bill provides a provision regarding the educational placement of youth who enroll in a school district upon release in subsection (8), “Program Accountability.” This provision may be more appropriate under subsection (9), “Exiting Program.”
  - The bill specifies one of the outcomes for a youth in a juvenile justice education program for determining a program’s performance rating as attaining an industry certification in an occupational area of a high demand identified in the Industry Certification list. This requirement is also provided for in subsection (9), (Exiting Program). Such certification may not be accessible for youths committed to a program for a short length of time. In addition, the bill does not appear to provide who will be responsible for cost associated with attaining the industry certification.
2. The bill amends s. 985.632, F.S., to require DJJ to establish a comprehensive quality assurance system for each program operated by DJJ or its contracted providers. The bill also provides in s. 1003.515(7), F.S. that DOE must identify a performance rating, by evaluating specified elements, for each residential and nonresidential juvenile justice education program. As a result, the bill appears to provide for dual accountability without clear articulation of the differential basis for such accountability or how enforcement will interrelate.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Moves substantive portions of the bill to more appropriate statutes;
- Provides a definition for “Juvenile Justice Education Programs”;

---

<sup>42</sup> Sections 120.52(8) and 120.536(1), F.S.

<sup>43</sup> *Supra Save the Manatee Club, Inc.*, at 599.

<sup>44</sup> *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So.2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

- Requires DJJ *in collaboration with DOE* to annually verify specified requirements of juvenile justice education programs;
- Requires DOE to ensure that there is accurate cost accounting for educational programs operated by the school districts, including programs operated by contracted private providers;
- Requires juvenile justice residential and nonresidential education programs to be held accountable for student performance outcomes no longer than six months following the youths' release from the program.
- Requires DOE *in collaboration with DJJ* to monitor the education performance of youth in juvenile justice facilities; prohibit school districts or private providers that have failing performance ratings from delivering the education services; and verify that a school district is operating or contracting with a private provider to deliver education services.
- Removes provisions authorizing DJJ to use its statutory authority to sanction or prohibit a private provider from delivering education services due to non-education reasons.
- Requires academic instructional personnel to be certified by the Department of Education, unless exempt as specified.
- Provides payment exemption for tuition and fees of state postsecondary institutions for specified youth under s. 1003.515(5)(b)3., F.S.

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