

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/CS/SB 700

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Judiciary Committee; and Senator Bradley and others

SUBJECT: Department of Juvenile Justice

DATE: March 21, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-------------------|-----------------|------------|------------------|
| 1. | <u>Dugger</u> | <u>Cannon</u> | <u>CJ</u> | Favorable |
| 2. | <u>Brown</u> | <u>Cibula</u> | <u>JU</u> | Fav/CS |
| 3. | <u>Clodfelter</u> | <u>Sadberry</u> | <u>ACJ</u> | Fav/CS |
| 4. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 700 amends chapter 985, F.S., which provides a framework for the juvenile justice system in Florida and delineates duties and responsibilities of the Department of Juvenile Justice (DJJ or department). Specifically, the bill enhances the state's focus on serious juvenile offenders, adopts measures to reduce recidivism, and increases care of juvenile offenders in the department's custody.

To provide an increased focus on serious cases and public safety, the bill:

- Requires the DJJ to notify a law enforcement agency and the victim of a juvenile offender who has escaped or absconded while in custody during commitment;
- Grants the court jurisdiction over a juvenile sex offender under THE DJJ supervision until he or she is 21 years old;
- Encourages the DJJ to develop evening-reporting centers to better support children in nonsecure detention;
- Authorizes the court to order juvenile offenders who commit technical violations of probation into a diversion program; and
- Waives fingerprinting requirements for children committing offenses that may only result in a civil citation.

To reduce recidivism through recognizing the special needs of children and the need for transitional services, the bill:

- Authorizes intake personnel to incorporate mental health, substance abuse, and psychosexual evaluations as part of the intake process;
- Establishes trauma-informed care as part of the DJJ model;
- Encourages placement of children in their home communities to facilitate family and community support;
- Enhances the transition-to-adult services offered and lifts the age restriction of youth clients eligible for service; and
- Requires the DJJ to focus on prevention services through providing academic and community support for at-risk youth.

To improve care to juveniles in the residential custody of the DJJ, the bill:

- Combines the commitment levels of low-risk and moderate-risk residential commitments into the newly-designated nonsecure residential commitment level and caps the number of beds authorized per facility at 90 beds, rather than the current cap of 165 beds;
- Creates a criminal offense of willful and malicious neglect, punishable as a third degree felony if the employee's lack of care does not result in harm to the juvenile offender in DJJ custody and as a second degree felony if great bodily harm results; and
- Allows for prosecution under the new criminal offense for any victim in commitment care, not just children under the age of 18.

To increase performance accountability, the bill requires the DJJ to adopt a system to measure performance based on recidivism rates of providers and programs, and to annually report findings to the Legislature.

The bill codifies a provision found in the 2013-2014 Implementing Bill for the General Appropriations Act which caps the allowable rate for hospital health services provided to juveniles at 110 percent of the Medicare allowable rate, with a cap of 125 percent in limited cases.

This bill grants the DJJ greater flexibility in the assessment process by allowing a DJJ employee other than a juvenile probation officer to participate in intake, screenings, and assessments.

The DJJ indicates that the bill will result in a small increase in costs which can be absorbed within existing resources. The Office of State Courts Administrator also indicates it expects that it will not need additional resources for any increased workload in the court system. The new detention criteria may result in some children being held in secure detention who would not be held under current law, and some others being held for a longer period of time. This may have an indeterminate fiscal impact on local government expenditures for a share of detention costs.

II. Present Situation:

Department of Juvenile Justice/Department of Health and Human Services

In years past, the Department of Health and Rehabilitative Services (HRS) participated in all court proceedings relating to children, including dependency and delinquency cases.¹ In 1994, the Legislature created the Department of Juvenile Justice (DJJ), and assigned the DJJ responsibility for juvenile delinquency cases and children in need of services and families in need of services (CINS/FINS) cases. The HRS retained jurisdiction of dependency cases. Despite this bifurcation, laws governing delinquency and dependency remained together in ch. 39, F.S.²

In 1997, the Legislature transferred provisions relating to juvenile delinquency proceedings in ch. 39, F.S., into ch. 984, F.S., (relating to CINS/FINS) and ch. 985, F.S., (relating to juvenile delinquency cases).³ However, the legislation inadvertently included a handful of provisions relating to dependency in the transfer. Dependency duties are now the responsibility of the Department of Children and Families (DCF).⁴

Jurisdiction

Section 985.0301(1), F.S., provides that Florida's circuit courts have exclusive original jurisdiction in criminal proceedings in which a child is alleged to have committed a violation. Currently, the circuit court where the alleged violation occurred may transfer a case to the circuit court in which the child resides or will reside at the time of detention or placement.⁵ A child detainee must be transferred to the appropriate detention center or facility or other placement directed by the court receiving the case.⁶

The court retains jurisdiction over a child until the child:

- Is 19 years old, if the child's case has not been resolved;
- Is 19 years old, if the child is ordered to participate in a probation program, including participation in transition-to-adulthood services;
- Is 21 years old, if the child is committed to the DJJ;
- Is 22 years old, if the child is committed to the DJJ for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program;⁷
- Is 21 years old, if the child is committed to the DJJ for placement in an intensive residential treatment program for 10-13 year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program;
- Is 21 years old, if the child is committed to a juvenile correctional facility or a juvenile prison, specifically for the purpose of allowing the child to complete the program;

¹ Florida Department of Juvenile Justice, *History of the Juvenile Justice System in Florida*, <http://www.djj.state.fl.us/about-us/history> (last visited on February 21, 2014).

² *Id.*

³ *Id.*

⁴ Section 39.01(21), F.S.

⁵ Section 985.0301(4)(a), F.S.

⁶ *Id.*

⁷ This is solely for the child to complete a conditional release program. Section 985.0301(5)(d), F.S.

- Is 21 years old, if the child is a juvenile sexual offender who has been placed in a program or facility for juvenile sexual offenders, specifically to complete the program; or
- Completes payment of court-ordered restitution.⁸

Contempt of Court

Section 985.037, F.S., authorizes the court to punish a child for contempt for interfering with the court or court administration, or for violating a court order or ch. 985, F.S. Direct contempt results from conduct committed by the juvenile in the presence of the judge, while indirect contempt concerns conduct committed outside the judge's presence.⁹

A child charged with direct contempt may be sanctioned immediately.¹⁰ If a child is charged with indirect contempt, the court must hold a hearing within 24 hours to determine if the child committed indirect contempt.¹¹ In indirect contempt proceedings, the child is given specified due process rights.¹²

If a court finds that a child committed contempt of court, the court may order the child to serve an alternative sanction¹³ or order the placement of the child into a secure facility¹⁴ for a specified time.¹⁵ If a child is placed into a secure facility, the court must review the placement every 72 hours.¹⁶

Fingerprinting and Photographing

Section 985.11(1)(a), F.S., requires a child who is charged with or found to have committed specified offenses to be fingerprinted by the appropriate law enforcement agency, and requires the law enforcement agency to submit the fingerprints to the Florida Department of Law Enforcement (FDLE).

Intake Process

Every child under the age of 18 charged with a crime in Florida is referred to the DJJ.¹⁷ Intake and screening services for youth referred to the DJJ are performed at a Juvenile Assessment Center¹⁸ by a DJJ employee.¹⁹ Once brought into intake, the DJJ assigns the child a juvenile

⁸ Section 985.0301(5), F.S.

⁹ *Kelley v. Rice*, 800 So.2d 247, 251 (Fla. 2d DCA 2001); *E.T. v. State*, 587 So.2d 615, 616 (Fla. 1st DCA 1991).

¹⁰ Section 985.037(4)(a), F.S.

¹¹ Section 985.037(4)(b), F.S.

¹² *Id.*

¹³ Section 985.037(3), F.S. Each judicial circuit is required to have an alternative sanctions coordinator to coordinate and maintain a spectrum of contempt sanction alternatives. The alternative sanctions coordinator serves under the chief judge of the circuit. The court may immediately request that the alternative sanctions coordinator recommend the most appropriate sanctions placement.

¹⁴ A child may only be placed into a secure facility if alternative sanctions are unavailable or inappropriate. Section 985.037(1), F.S.

¹⁵ Five days for a first offense and 15 days for a second or subsequent offense of contempt. Section 985.037(2), F.S.

¹⁶ Section 985.037(4), F.S.

¹⁷ A referral is similar to an arrest in the adult criminal justice system.

¹⁸ Section 985.135(4), F.S.

¹⁹ Section 985.14(2), F.S.

probation officer, conducts an assessment, and recommends appropriate sanctions and services to the state attorney and the court.²⁰ The probation officer serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.²¹

Detention Care System

Detention care is the temporary care of children pursuant to an adjudication or order of the court.²² Children may be detained in one of three types of detention care: secure,²³ nonsecure,²⁴ and home detention²⁵ when specific statutory criteria are met.

Section 985.24, F.S., provides guidelines for the court to use in ordering detention care, including that the child:

- Presents a substantial risk of not appearing at a hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court; or
- Requests protection from imminent bodily harm.

If a law enforcement agency takes a child into custody, the DJJ must accept custody of the child and review the facts in the arrest report to determine what, if any, detention care is necessary.²⁶ The probation officer makes an initial decision regarding detention care placement using the “Detention Risk Assessment Instrument.”²⁷ In certain instances, the probation officer does not have discretion and must place a child in secure detention (e.g., when a child is charged with possessing or discharging a firearm on school property).²⁸

A child may not be held in secure, nonsecure, or home detention for more than 24 hours without a detention hearing.²⁹ A detention hearing is conducted by a circuit judge who reviews the

²⁰ Section 985.14(1) and (2), F.S.

²¹ Section 985.145(1), F.S.

²² Section 985.03(18), F.S.

²³ Section 985.03(18)(a), F.S., defines “secure detention” as temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.

²⁴ Section 985.03(18)(b), F.S., defines “nonsecure detention” as temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement. However, the DJJ reports that its current practice for detention is to only utilize secure or home detention; nonsecure detention has not been used for several years. Department of Juvenile Justice, *2014 Bill Analysis for SB 700* (2014) (on file with the Senate Judiciary Committee).

²⁵ Section 985.03(18)(c), F.S., defines “home detention” as temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication, disposition, or placement.

²⁶ Section 985.25(1), F.S.

²⁷ Sections 985.25(1)(b) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument must be developed, when and how it must be updated, and what factors the assessment instrument should identify when evaluating a child to determine whether detention placement is appropriate.

²⁸ Section 985.25(1)(b), F.S.

²⁹ Section 985.26(1), F.S. The child has the right to be represented at this hearing or can waive the right. Section 985.033, F.S.

assessment instrument to determine whether probable cause exists that the child committed the offense and the need for continued detention.³⁰ A court's detention order must include specific instructions for release of the child from detention (generally, a 21-day limit applies to secure, nonsecure, or home detention³¹).³²

If the child is a juvenile sex offender, detention staff must notify the appropriate law enforcement agency and school personnel of the child's release from secure detention or transfer to nonsecure detention.³³

Disposition

The state attorney formally charges a child with a criminal offense by filing a petition for delinquency.³⁴ Because a child may be detained if adjudicated delinquent, federal constitutional law requires many of the same due process safeguards afforded to adult criminal defendants³⁵ and that the case proceed to adjudicatory hearing (trial)³⁶ as quickly as possible. If the court finds that the child committed the violation of law, the court may either withhold adjudication of delinquency or adjudicate the child delinquent.³⁷

If the court finds that a child has committed an offense, the court must hold a disposition hearing to determine appropriate punishment. Before making a final disposition, the court reviews a pre-disposition report³⁸ prepared by the DJJ.³⁹ The pre-disposition report identifies appropriate educational and vocational goals, which include successful completion of vocational courses, and successful attendance and completion of the child's current grade. The court must then determine whether it is appropriate to commit the child to the DJJ or probation and community-based sanctions.⁴⁰

³⁰ Section 985.255(3), F.S.

³¹ Section 985.26(2), F.S. A child may be held up to 30 days if the child is charged with what would be, if committed by an adult, a capital felony, a life felony, a first degree felony, or a second degree felony offense.

³² Section 985.255(3)(c), F.S.

³³ Similarly, once a juvenile sex offender is released from a commitment program, the DJJ must notify the FDLE under ss. 985.481 and 985.4815, F.S. The DJJ has been required to provide this notification electronically since November 1, 2007.

³⁴ Section 985.318, F.S.

³⁵ Section 985.35(2)(a), (b), and (c), F.S., provides that the child is entitled to present evidence, cross examine witnesses, protect himself or herself from self-incrimination, and to not have evidence that was illegally seized or obtained presented to the court in the case against them. Facts must be established beyond a reasonable doubt and rules of evidence apply to the proceedings. Additionally, s. 985.033(1), F.S., provides that a child is entitled to legal counsel at all stages of any delinquency court proceeding.

³⁶ Section 985.03(2), F.S., defines an "adjudicatory hearing" as a hearing for the court to determine whether the facts support the allegations stated in the petition, as provided under s. 985.35, F.S. In an adjudicatory hearing, the judge decides both questions of fact and law. Section 985.35(2), F.S.

³⁷ Section 985.35, F.S. An adjudication of delinquency by a court is not considered a conviction.

³⁸ Section 985.433(6), F.S., requires the pre-disposition report to include a summary of the juvenile's present offense, a statement by the youth, background information regarding the familial and community environment, a narrative explaining the juvenile's employment or school history, psychological data, restitution information, criminal history, risk assessment, and the recommendations of DJJ concerning disposition of the case.

³⁹ Section 985.43, F.S.

⁴⁰ Section 985.433(6), F.S.

Probation or Postcommitment Probation (Probation)

A child's probation program must include both a penalty and a rehabilitative component.⁴¹ Each child is assigned a juvenile probation officer who monitors the child's compliance and helps the child connect with service providers.

If the child does not comply with terms of probation, the child may be brought before the court on a violation of probation. The violation may be a substantive violation for committing a new criminal offense or a technical violation for failure to comply with a condition of probation.⁴² If a child admits to the violation or is found by the court to have violated probation, the court must enter an order revoking, modifying, or continuing probation.⁴³ Specifically, the court may:

- Place the child into a consequence unit⁴⁴ for up to 15 days;
- Place the child on home detention with electronic monitoring;
- Modify or continue the child's probation; or
- Revoke probation and commit the child to the DJJ.⁴⁵

Commitment

The court may commit the child to a nonresidential or residential facility.⁴⁶ Commitment programs vary by "restrictiveness level," defined in s. 985.03(46), F.S., as "the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children." Levels of commitment are:

- Minimum-risk nonresidential, a level 2 commitment program, where children remain in their community and participate at least 5 days a week in day treatment;
- Low-risk residential, a level 4 program, where children live in a residential program and have unsupervised access to their community;
- Moderate-risk residential, a level 6 program, where children are in a residential program and have supervised access to their community;
- High-risk residential, a level 8 program, where children are not allowed access to their community; and
- Maximum-risk residential, a level 10 long-term residential program, including juvenile correctional facilities or juvenile prisons that do not allow the children to have any access to their community.⁴⁷

Florida law caps the number of beds at residential facilities at 165 beds.⁴⁸

⁴¹ Section 985.435(2) and (3), F.S., give examples of what these components include.

⁴² See *Meeks v. State*, 754 So.2d 101, 103-104 (Fla. 1st DCA 2000); *Johnson v. State*, 678 So.2d 934, 934-935 (Fla. 3d DCA 1996).

⁴³ Section 985.439(4), F.S.

⁴⁴ Section 985.439(2), F.S., defines "consequence unit" as a secure facility specifically designated by the department for children who are taken into custody under s. 985.101, F.S., for violating probation or postcommitment probation, or who have been found by the court to have violated the conditions of probation or postcommitment probation.

⁴⁵ Section 985.439(4)(d), F.S.

⁴⁶ Section 985.441, F.S.

⁴⁷ Section 985.03(46)(e), F.S.

⁴⁸ Section 985.03(46), F.S.

If the court determines the child should be adjudicated delinquent and committed to the DJJ through court order,⁴⁹ the DJJ must recommend the restrictiveness level for the child. The court may commit the child at a different restrictiveness level but must set out findings for departure in the record based on a preponderance of the evidence.⁵⁰

Once the court enters a commitment order, the DJJ is responsible for determining placement in a specific residential program based on the child's identified risks and needs.⁵¹ Currently, the court must order a child to be placed in a specific restrictiveness level from level 2 through level 10 and the DJJ does not have the flexibility to move a child into a different restrictiveness level.

A child is committed to a residential program for an indeterminate length of time and must complete an individualized treatment plan.⁵² The goals of the plan are based on the child's rehabilitative needs and include educational and vocational service goals.⁵³ All residential programs provide medical, mental health, substance abuse, and developmental disability services.⁵⁴

Conditional Release and Transition-to-Adulthood Services

Conditional release is defined as the care, treatment, help, and supervision provided to a juvenile released from a residential commitment program. The purposes of conditional release are to protect the public, reduce recidivism, increase responsible productive behavior, and provide for a successful transition of the youth from the DJJ to the family.⁵⁵

The DJJ must assess each child placed into a residential commitment facility to determine the need for conditional release services upon release from the facility.⁵⁶ Children participating in conditional release services must participate in an educational program⁵⁷ if they are of compulsory school attendance age or noncompulsory school age and have not obtained a high school diploma or its equivalent.⁵⁸ A child who has received a diploma or equivalent, but is not employed, must attend college classes, other career education, or participate in workforce development.⁵⁹

The DJJ must also provide older⁶⁰ children with opportunities to participate in "transition-to-adulthood" services that build life skills and increase the ability to live independently and be

⁴⁹ Section 985.441(1), F.S.

⁵⁰ Section 985.441(2), F.S.

⁵¹ Department of Juvenile Justice, *Residential Services*, Comprehensive Accountability Report, Fiscal Year 2011-2012, <http://www.djj.state.fl.us/research/reports/car> (last visited February 24, 2014).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Section 985.03(12), F.S.

⁵⁶ Section 985.46(3), F.S.

⁵⁷ Pursuant to s. 1003.21(1)(a)1. and (2)(a), F.S.

⁵⁸ Section 985.46(5), F.S.

⁵⁹ *Id.*

⁶⁰ The term "older" in s. 985.461(2)(b), F.S., refers to children 17 years of age or older.

self-sufficient.⁶¹ The DJJ is authorized to engage in a variety of activities designed to support participation in transition-to-adulthood services.⁶²

Internal Agency Procedures

Administering the Juvenile Justice Continuum

Section 985.601, F.S., requires the Department of Juvenile Justice (DJJ) to develop or contract for diversified and innovative programs to provide rehabilitative treatment.

Quality Assurance and Cost-Effectiveness

Section 985.632, F.S., requires the DJJ to provide transparency to policy makers and the public about the costs and effectiveness of the programs that it operates. The DJJ is also required to develop an accountability system to assist in ensuring that children served receive the best services for their needs.

The DJJ is required to annually collect cost data for every program that it operates or contracts for and submit this data to the Legislature and the Governor.⁶³ The DJJ is also required to develop a cost-effectiveness model and apply the model to each commitment program. The cost-effectiveness model must compare program costs to client outcomes and program outputs, and include recidivism rates.⁶⁴ The DJJ must rank each commitment program based on the cost-effectiveness model and may terminate a program if the program has failed to achieve a minimum threshold of program effectiveness.

Departmental Contracting Powers; Personnel Standards and Screening

Section 985.644, F.S., requires DJJ employees and all personnel⁶⁵ of contract providers to complete a:

- Level 2 employment screening prior to employment (which requires fingerprinting);⁶⁶ and
- National criminal records check by the Federal Bureau of Investigation every 5 years following the date of the person's employment.

The DJJ must electronically submit fingerprint information of DJJ employees and contract personnel (other than law enforcement, correctional, and correctional probation officers) to the FDLE.

⁶¹ Section 985.461(1), F.S.

⁶² Section 985.461(4), F.S.

⁶³ Section 985.632(3), F.S.

⁶⁴ Section 985.632(4)(a), F.S.

⁶⁵ Section 985.644(3)(a), F.S., states that personnel includes all owners, operators, employees, persons who have access to confidential juvenile records, and volunteers of contract providers for any program for children.

⁶⁶ Section 435.04, F.S. Level 2 employment screenings require fingerprints to be processed through statewide criminal history records checks through FDLE and national criminal history records checks through the Federal Bureau of Investigation. The screenings may include local criminal records checks through local law enforcement agencies.

Juvenile Justice Training Academies

The DJJ is required to establish and oversee juvenile justice training academies.⁶⁷ The DJJ must develop, implement, and maintain the curriculum for the training academies, develop uniform minimum job-related training, and establish a certifiable program for juvenile justice training.⁶⁸

Section 985.66(3), F.S., requires the DJJ to provide specified components to the training programs for the juvenile justice program staff based upon a job-task analysis.⁶⁹ All department program staff and providers who deliver direct care services pursuant to contract with the DJJ must participate in and successfully complete the approved training programs relevant to their areas of employment.⁷⁰ Judges, state attorneys, public defenders, law enforcement officers, and school district personnel may also participate in these programs.

Juvenile Justice Circuit Advisory Boards

Section 985.664, F.S., authorizes juvenile justice circuit advisory boards (advisory boards) to be established in each of the 20 judicial circuits. The purpose of advisory boards is to advise the DJJ in the development and implementation of juvenile justice programs and policies related to at-risk youth.⁷¹ The duties of the advisory boards are enumerated in s. 985.664(2), F.S.

Direct-Support Organizations

Section 985.672, F.S., defines a direct support organization as a not-for-profit organization whose sole purpose is to support the juvenile justice system and which is:

- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by the DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the DJJ's adopted goals and mission.

The DJJ may permit a direct support organization to use fixed property and facilities of the juvenile justice system free of charge.⁷²

⁶⁷ Section 985.66(1), F.S.

⁶⁸ Section 985.66(1), (2), and (3), F.S.

⁶⁹ These components include designing, implementing, maintaining, evaluating, and revising a basic training program for the purpose of providing specified minimum employment training qualifications for all juvenile justice personnel, including a competency-based examination; an advanced training program intended to enhance knowledge, skills, and abilities related to job performance with competency-based examinations for each training course; a career development training program intended to prepare personnel for promotion with competency-based examinations for each training course; and juvenile justice training courses, entering into contracts for training courses intended to further safety and well-being of both citizens and juvenile offenders. Section 985.66(3), F.S.

⁷⁰ Section 985.66(3), F.S.

⁷¹ Section 985.664(1), F.S.

⁷² Section 985.672(4), F.S.

Siting of Facilities

Section 985.682, F.S., establishes procedures that must be followed when proposing a site for a juvenile justice facility. Currently, the DJJ is required to conduct a detailed statewide comprehensive study to determine current and future needs for all facility types for children committed to the DJJ.⁷³ The study must assess, rank, and designate appropriate sites based upon these needs.⁷⁴

One-Time Startup Funding for Juvenile Justice Purposes

Section 985.69, F.S., authorizes the DJJ to use funds from juvenile justice appropriations as one-time startup funding for juvenile justice purposes that include remodeling or renovation of existing facilities, construction and leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the startup of facilities or programs. The DJJ is currently funded for repair and maintenance of facilities through the General Appropriations Act.

Payment of Medical Expenses for Detained Youth

Medicare Rates

Medicare is the federal health insurance program for people who are 65 or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant).⁷⁵

Medicare reimburses providers based on the type of service they provide. The Centers for Medicare & Medicaid Services develops fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.⁷⁶ Other Medicare providers are paid via a prospective payment system. The prospective payment system is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services).

The Department of Corrections and Medical Payment Caps

In 2008, the General Appropriations Implementing Bill⁷⁷ capped medical payment rates that the Department of Corrections (DOC) could pay to a hospital or a health care provider providing services at a hospital. Payments to providers for services were capped at 110 percent of the Medicare allowable rate for inmate medical care if no contract existed between the DOC and a hospital, or a provider providing services at a hospital. However, hospitals reporting an operating loss to the Agency for Health Care Administration (AHCA) were capped at 125 percent of the

⁷³ Section 985.682(1), F.S.

⁷⁴ Section 985.682(2), F.S.

⁷⁵ Centers for Medicare & Medicaid Services, *What is Medicare?*, <http://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/whats-medicare/what-is-medicare.html> (Last visited February 24, 2014).

⁷⁶ Centers for Medicare & Medicaid Services, *Fee Schedules – General Information*, <http://www.cms.gov/FeeScheduleGenInfo/> (Last visited on February 24, 2014).

⁷⁷ Section 11, Chapter 2008-153, L.O.F.

Medicare allowable rate. In 2009, s. 945.6041, F.S., codified the payment caps and made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap.⁷⁸

Similarly, the 2013 General Appropriations Implementing Bill capped medical payment rates that the DJJ could pay to a hospital or provider providing any health care services.⁷⁹

Offenses Committed Against Youth under the Jurisdiction of the DJJ

Sexual Misconduct by an Employee

Section 985.701, F.S., makes it a second degree felony⁸⁰ for a DJJ employee⁸¹ to engage in sexual misconduct⁸² with juvenile offenders “detained or supervised by, or committed to the custody, of the department.” The statute does not define the term “juvenile offender.”

Neglect of Youth Committed to the Department of Juvenile Justice

Section 985.02, F.S., provides that the children of the state must be provided with protection from abuse, neglect, and exploitation; as well as adequate nutrition, shelter, and clothing. In some instances, a DJJ employee has neglected or abused a juvenile offender resulting in harm to the juvenile offender.⁸³

Currently, ch. 985, F.S., does not provide sanctions against the neglect of a youth in the DJJ’s custody. As a result, prosecutors have looked outside of ch. 985, F.S., to prosecute cases involving abuse or neglect of a child in the care of the DJJ. One statute prosecutors have attempted to use to prosecute is s. 827.03, F.S., relating to criminal child neglect. However, the child neglect statute is not designed to prosecute neglect cases that arise within the unique framework of the juvenile justice environment, nor does it apply to youth in the DJJ’s custody who are 18 or older.⁸⁴

⁷⁸ Section 8, Chapter 2009-63, L.O.F.

⁷⁹ Section 12, Chapter 2013-41, L.O.F.

⁸⁰ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁸¹ Section 985.701(1)(a)1.b., F.S., defines “employee” as paid staff members, volunteers, and interns who work in a DJJ program or a program operated by a provider under a contract.

⁸² Section 985.701(1)(a)1.a., F.S., defines “sexual misconduct” as fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the DJJ or an employee of a provider under contract with the DJJ.

⁸³ *DJJ supervisor thought Eric Perez was “faking” as he dies in juvie lockup, officer testifies*, BROWARD/PALM BEACH NEW TIMES, http://blogs.browardpalmbeach.com/pulp/2012/03/djj_eric_perez_death_grand_jury_report.php; *Parents of teen who died at Palm Beach County juvenile center say they’ll sue DJJ*, THE PALM BEACH POST, <http://www.palmbeachpost.com/news/news/crime-law/parents-of-teen-who-died-at-palm-beach-county-ju-1/nLhcN/>.

⁸⁴ Section 827.01, F.S., defines a child as “any person under the age of 18 years.” While the majority of youth in DJJ’s custody are under 18 years old, DJJ has custody of persons 18 years old and older. Section 985.0301(5)(a), F.S., requires DJJ to retain jurisdiction over a child alleged to have committed a delinquent act until the child reaches 19 years old and authorizes DJJ to retain jurisdiction for an additional 365 days following the child’s 19th birthday if the child is participating in transition-to-adulthood services.

Diversion Programs/Expunction of Records

Section 943.0582, F.S., provides guidelines to the FDLE relating to the expunction of criminal history records of youth who have successfully completed a prearrest, postarrest, or teen court diversion program.

Prevention Services Programs and Providers

Section 985.605, F.S., requires the DJJ to monitor all state-funded programs, grants, appropriations, or activities designed to prevent juvenile delinquency.⁸⁵ The DJJ is authorized to expend funds to prevent juvenile delinquency as long as it maximizes public accountability and documents outcomes. Each entity that receives money from the state must design its programs to provide one of four specified strategies⁸⁶ and submit demographic information of participants to the DJJ for verification.⁸⁷

Section 985.606, F.S., requires each state agency or entity that receives or uses state money to fund juvenile delinquency prevention programs, grants, appropriations, or activities to submit performance data to the Governor and both houses of the Legislature by January 31st of each year for the preceding fiscal year.

Tours of State Correctional Facilities

Section 945.75, F.S., requires the DOC to develop programs in which a judge may order juveniles who have committed delinquent acts to be allowed to tour state correctional facilities under terms and conditions established by the DOC. The statute requires counties to develop similar programs involving county jails, commonly referred to as “scared straight programs.”⁸⁸ The goal of these programs is to modify the behavior of the juveniles by shocking, scaring, and thus deterring them from engaging in further delinquent activity.⁸⁹ The DJJ reports because it complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002 it receives between 2 million and 8 million dollars in federal funding.⁹⁰ The DJJ reports that it could lose two-thirds of its federal funding because the scared straight tours violate several portions of the Juvenile Justice and Delinquency Prevention Act.⁹¹

III. Effect of Proposed Changes:

This bill amends various provisions in law relating to juvenile delinquency, to enhance public safety, reduce recidivism, better measure performance outcomes, and improve care provided to juvenile offenders in the custody of the Department of Juvenile Justice (DJJ).

⁸⁵ Section 985.605(1), F.S.

⁸⁶ Section 985.605(2)(a), F.S.

⁸⁷ Section 985.605(2)(c), F.S.

⁸⁸ Virginia Department of Criminal Justice Services, *Scared Straight Programs*, www.dcjs.virginia.gov/juvenile/compliance; See also Department of Juvenile Justice, *Scared Straight Programs: Jail and Detention Tours*, www.djj.state.fl.us/docs/research2/scared_straight_booklet_version (last visited on February 12, 2014)

⁸⁹ *Id.*

⁹⁰ Department of Juvenile Justice, *2013 Agency Proposal, Juvenile Justice Reform, Jail Tours* (2013) (on file with Senate Criminal Justice Committee.)

⁹¹ *Id.*

Prevention

The bill creates s. 985.17, F.S., relating to prevention services. To reduce recidivism, protect public safety, and facilitate successful re-entry into the community, the bill requires the DJJ to:

- Engage faith- and community-based organizations;⁹²
- Establish volunteer coordinators in each circuit and encourage mentor recruitment;
- Encourage the recruitment of volunteers to serve as mentors for youth in DJJ services;
- Promote the “Invest in Children” license plate to help fund programs and services;⁹³
- Ensure prevention services address the multiple needs of youth at risk of becoming delinquent in order to decrease the prevalence of disproportionate minority representation in the juvenile justice system; and
- Expend prevention-related funds in a manner that maximizes accountability and ensures documentation of outcomes.

As a condition for receiving state funds, entities that receive or use state moneys to fund prevention services through contracts with the DJJ or grants from an entity will be required to:

- Design programs providing services to further one or more of the following strategies:
 - Encourage youth to attend and succeed in school;
 - Engage youth in productive and wholesome activities during non-school hours that build positive character, instill positive values, and enhance educational experiences;
 - Encourage youth to avoid the use of violence; and
 - Assist youth to acquire skills needed to find meaningful employment, including assistance in finding a suitable employer; and
- Provide the department with demographic information, dates of services, and the type of interventions received by each youth.

The bill requires the DJJ to monitor output and outcome measures for each program strategy and annually report this data in the Comprehensive Accountability Report. The DJJ also will be required to monitor all state-funded programs that receive or use state moneys to fund the juvenile delinquency prevention services through contracts or grants for compliance with contract and grant provisions.

Offenses Committed Against Youth under the Jurisdiction of the Department of Juvenile Justice

Sexual Misconduct by an Employee

The bill amends s. 985.701, F.S., to define “juvenile offender” as “any person of any age who is detained or supervised by, or committed to the custody of, the department.” This mirrors the definition used in s. 985.702, F.S.

⁹² The bill further provides that the voluntary programs and services include, but are not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

⁹³ The bill further requires the DJJ to allocate moneys for programs and services within each county based on that county’s proportionate share of the license plate annual use fee collected by the county, which is identical to how s. 320.08058(11), F.S., specifies the money should be allocated.

Neglect of Youth Committed to the Department of Juvenile Justice

Section 985.702, F.S., is created and establishes a new criminal offense relating to willful and malicious neglect of a juvenile offender. The bill makes it a third degree felony⁹⁴ for a DJJ employee to willfully and maliciously neglect a juvenile offender *without* causing great bodily harm, permanent disability, or permanent disfigurement. If the neglect does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a second degree felony.⁹⁵

An “employee” is defined in the bill as a paid staff member, volunteer, or intern who works in a DJJ program or a program operated by a provider under contract with the DJJ. A “juvenile offender” is defined as “any person of any age who is detained by, or committed to the custody of, the department.” “Neglect” is defined as an employee’s:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender’s physical and mental health including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created s. 985.702, F.S., the determination constitutes sufficient cause under s. 110.227, F.S.,⁹⁶ for dismissal from employment with the DJJ, and prohibits the employee from being employed in any capacity in the juvenile justice system.

The bill requires employees who witness the neglect of a juvenile offender to immediately report the incident to the DJJ’s incident hotline. The witness must also prepare an independent report specifically describing the incident, location and time, and persons involved. The report must be submitted to the witness’s supervisor or program director, who in turn must provide copies of the report to the inspector general and the circuit juvenile justice manager. The inspector general must immediately conduct an appropriate administrative investigation and, if probable cause exists, notify the state attorney in the circuit in which the incident occurred.

Any person required to prepare a report who knowingly or willfully fails to do so or prevents another person from filing a report commits a first degree misdemeanor.⁹⁷ In addition, any person who knowingly or willfully:

- Submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor.
- Coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

⁹⁴ A third degree felony is punishable by up to five years imprisonment and a fine of up to \$5,000. Sections 775.082, 775.083, and 775.084, F.S.

⁹⁵ A second degree felony is punishable by up to 15 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁹⁶ Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

⁹⁷ A first degree misdemeanor is punishable by up to 1 year incarceration and a fine up to \$1,000. Sections 775.082, F.S. and 775.083, F.S.

Trauma-informed Care as a Component of the Department of Juvenile Justice Model

The bill requires the DJJ to implement trauma-informed care in its model of response and delivery of services to juvenile offenders. “Trauma-informed care” is defined to mean providing services to children with a history of trauma, which recognizes the symptoms of trauma and acknowledges the role the trauma has played in the child’s life. Trauma may include, but is not limited to, community and school violence, physical or sexual abuse, neglect, medical difficulties, and domestic violence.

Family Support

The bill recognizes the importance of placing facilities close to the home communities of children they house in facilitating family involvement in the treatment process and encourages the use of customized treatment plans to prepare a child for a successful transition back to his or her family and community support system.

Detention Care System

The definition of “detention care” found in s. 985.03, F.S., is revised to remove “home detention,” thereby limiting the definition to “secure” and “nonsecure” detention. The bill amends the definition of “nonsecure detention” to mean:

Temporary nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive home environment under the supervision of department staff pending adjudication, disposition, or placement. Forms of nonsecure detention may include, but are not limited, to home detention, electronic monitoring, day reporting centers, evening reporting centers, nonsecure shelters, and may include other requirements imposed by the court.

The bill authorizes the DJJ to develop evening reporting centers (centers), which are included in the definition of “nonsecure detention.” These centers serve as an alternative to placing a child in secure detention and may be co-located with a juvenile assessment center. Centers must serve children and families who are awaiting a child’s court hearing and must operate at a minimum during the afternoon and evening hours to provide a highly structured program of supervision. Centers may also provide academic tutoring, counseling, family engagement programs, and other activities. The bill specifies that if DJJ establishes centers, it must be do so within its existing resources.

The term “juvenile probation officer” is replaced with the term “department” throughout many of the detention-related statutes, which will allow the DJJ greater flexibility to use employees other than probation officers in initial detention placement. The bill specifies a child’s “illegal possession of a firearm” can be considered as a basis for ordering detention or continued detention and requires secure detention for any child who has been taken into custody on three or more separate occasions within a 60-day period.

The bill requires detention staff to notify the appropriate law enforcement agency, school personnel, and victim when a child charged with any of the following offenses is released from secure detention or transferred to nonsecure detention:

- Murder, under s. 782.04, F.S.;
- Sexual battery, under ch. 794, F.S.;
- Stalking, under s. 784.048, F.S.; or
- Domestic violence, as defined in s. 741.28, F.S.

In some respects, the notice requirement expands notice by not limiting notice to juvenile sex offenses. In other respects, this provision limits notice, as notice is only required for sexual battery, not all of the currently-included offenses that qualify a child as a juvenile sex offender.

In instances where a detained child is transferred to a jail or other facility used to detain adults,⁹⁸ the bill requires physical observation and documented checks of the child every 10 minutes. Existing law requires observations every 15 minutes.

The court must place in detention care all children who are adjudicated and awaiting placement in a commitment program. In such instances, the bill requires, rather than permits, a child who has been committed to a high-risk or maximum risk residential facility to be held in secure detention until placement.

Jurisdiction

The bill amends s. 985.0301, F.S., to authorize, rather than require, the court to transfer a detained child to a detention center in the circuit in which the child resides or will reside at the time of detention. The bill restricts transfers to only these two circumstances, which means the receiving court will no longer be able to direct where the detained child may be placed when a case is being transferred.

The bill simplifies statutory jurisdictional criteria. As a result, the court will retain jurisdiction over a child until the child:

- Is 19 years old, generally, or if the child is in a probation program;
- Is 21 years old, if the child is committed to the DJJ in any type of commitment program, specifically for the purpose of allowing the child to complete the commitment program, including conditional release supervision;
- Is 21 years old, if the child is a juvenile sexual offender who has been placed on community-based treatment alternative with supervision, or in a program or facility for juvenile sexual offenders, specifically for the purpose of completing the program; or
- Satisfies restitution ordered in the case.

Contempt of Court

The bill requires the court to hold a hearing to determine if a child committed direct contempt of court and affords the child specified due process rights at this hearing. The bill also clarifies if a

⁹⁸ Section 985.265(5), F.S., sets forth instances in which a child may be detained in a jail or other facility used to detain adults.

judge places a child into a secure facility for contempt, the facility must be a detention facility. In these instances, the court needs to review the placement only upon motion by the defense attorney or state attorney. Under existing law, the court must review the placement every 72 hours.

Fingerprinting and Photographing

The bill excludes a child from fingerprint requirements if the child is issued a civil citation. This provision may better focus resources on more serious juvenile offenders by waiving fingerprinting requirements of children charged with nonserious delinquent acts.

Intake Process

Section 985.14, F.S., is amended to allow both the DJJ and juvenile assessment center personnel to perform the intake process, which may provide for a more efficient intake process in counties that operate their own juvenile assessment centers. The bill also:

- Clarifies that the intake assessment process consists of an initial assessment that may be followed by a full mental health, substance abuse, cognitive impairment, and/or psychosexual evaluation, which may help decision makers better target successful treatment and reduce recidivism; and
- Requires children to be screened to determine career or technical education problems (rather than just vocational problems), which provides more options for children in pursuing a successful career.

Disposition

Predisposition Reports

The bill requires the predisposition report prepared by the DJJ to assist the court in determining whether a child is committed is to identify appropriate educational and career (rather than vocational) goals for the child, which include:

- Successful completion of career and technical education courses (rather than vocational courses); and
- Successful completion of the child's current grade or recovery of credits or classes the child previously failed.

Probation or Postcommitment Probation (Probation)

A court is authorized by the bill to impose an alternative consequence for juveniles on probation who commit relatively minor violations (technical violations). If so, the judge must approve specific consequences for specific future violations of the conditions of probation. Alternative consequence programs:

- Must be established at the local level in coordination with law enforcement agencies, the Chief Judge of the circuit, the State Attorney, and the Public Defender; and
- May be operated by a law enforcement agency, the DJJ, a juvenile assessment center, or another entity selected by DJJ.

Commitment

The term “juvenile probation officer” is replaced with the term “department” throughout many of the commitment-related statutes, which will allow the DJJ to use employees other than probation officers to perform commitment-related duties.

The “restrictiveness levels” in s. 985.03(46), F.S., of low-risk residential (level 4) and moderate-risk residential (level 6) are combined into a single “nonsecure residential” group. This will allow the DJJ to place a child whose risk is currently low into a program that caters to children with slightly higher risk levels to ensure the child access to other needs and services.

The current cap on residential beds per facility is reduced to 90 beds from 165 beds. This reduction in the number of residential beds authorized per facility may increase efficiency of facilities in meeting the goals of commitment and reducing recidivism.

Certain youth⁹⁹ will be allowed to be committed to nonsecure residential placement under this bill if the child has:

- Previously been adjudicated or *had an adjudication withheld* for a felony offense; or
- *Previously* been adjudicated or had adjudication withheld for three or more misdemeanor offenses *within the last 18 months*.

The amendments to s. 985.275, F.S., requires the DJJ to notify a law enforcement agency and, if the offense requires victim notification under ch. 960, F.S., the victim, any time a child in the custody of the DJJ:

- Escapes from a residential commitment program or from being transported to or from one; or
- Absconds from a nonresidential commitment facility.

The DJJ also will be required by the bill to make every reasonable effort to locate the child.

Conditional Release and Transition-to-Adulthood Services

The bill amends s. 985.46, F.S., to clarify conditional release includes the provision of transition-to-adulthood services. The bill also requires a child of noncompulsory school age on conditional release supervision to participate in the education program or career and technical education courses.

The application of transition-to-adulthood services is expanded by the bill by removing the limitation that these services only be provided to “older children.” As a result, any child who is under the supervision of the DJJ may be provided transition-to-adulthood services as part of his or her treatment plan.

The activities the DJJ is authorized to engage in to support participation in transition-to-adulthood services are expanded. Specifically, the DJJ may:

- Employ community re-entry teams to assist in developing a list of age appropriate activities and responsibilities to be incorporated in the child’s case plan. Community re-entry teams

⁹⁹ This includes youth whose offense is a misdemeanor as well as youth who are on probation for a misdemeanor and who commit a technical violation. Section 985.441(2), F.S.

include representatives from school districts, law enforcement, workforce development services, community based service providers, and the child's family.

- Assist the child in building a portfolio of educational and vocational accomplishments, necessary identification, and resumes and cover letters to enhance the child's employability; and
- Collaborate with school district contacts to facilitate appropriate educational services based on the child's identified needs.

Internal Agency Procedures

Quality Assurance and Cost-Effectiveness

The bill amends s. 985.632, F.S. to:

- Require the annual report to collect and analyze available statistical data for the purpose of ongoing evaluation of all programs;
- Delete the terms "client" and "program effectiveness" and adds the following definitions:
 - "Program," which means any facility or service for youth that is operated by the DJJ or by a provider under contract with the DJJ; and
 - "Program group," which means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison among programs within the group;
- Codify the Comprehensive Accountability Report (CAR),¹⁰⁰ and requires the DJJ to work with contract service providers to develop a standard methodology for measuring and reporting program outputs and youth outcomes;
- Require the standard methodology used in the CAR to include certain terminology for measuring performance, to specify program outputs, and to specify desired child outcomes and methods to measure child outcomes; and
- Require the cost-effectiveness model to include a comparison of program costs to expected and actual child recidivism rates, rather than client outcomes and program outputs; and requires the DJJ to rank commitment programs based on performance measures and adherence to quality improvement standards.

Departmental Contracting Powers; Personnel Standards and Screening

The bill provides that law enforcement, correctional, or correctional probation officers certified pursuant to s. 943.13, F.S., are not required to submit to level 2 screenings if they are currently employed by a law enforcement agency or correctional facility.

Juvenile Justice Training Academies

Section 985.66, F.S., is amended to:

- Remove references to "academies" when referring to juvenile justice training programs;
- Require the DJJ to designate the *number* of (not just the location of) training programs and courses; and

¹⁰⁰ The CAR, in its current form, has been published by the DJJ since 2006. It includes all of the information required to be reported under s. 985.632, F.S., as well as additional information. See *Comprehensive Accountability Reports*, <http://www.djj.state.fl.us/research/reports/car> (last visited on February 12, 2014).

- Authorize all employees of contract providers who provide services or care for youth under the responsibility of the DJJ to participate in the certifiable training program.

Juvenile Justice Circuit Advisory Boards

The bill amends s. 985.664, F.S., to remove obsolete language and specifies the chair of a board serves at the pleasure of the DJJ's Secretary.

Direct-Support Organizations

Current law does not address whether the DJJ may authorize direct support organizations to use personnel services of the juvenile justice system. The bill authorizes the DJJ to permit a direct support organization to use its personnel services. Personnel services include full-time or part-time personnel, as well as payroll processing services.

One-Time Startup Funding for Juvenile Justice Purposes

The bill changes references to "startup" funding and costs in s. 985.69, F.S., to refer to "repair and maintenance" funding and costs. This allows these funds to be used for the continuing repair and maintenance of the DJJ facilities.

Payment for Medical Expenses for Detained Youth (Section 35)

The bill codifies a similar provision contained in the 2013-2014 Implementing Bill for the General Appropriations Act.¹⁰¹ This provision requires, if there is no contract between the DJJ and the hospital or provider providing health care services (services) at a hospital, payments to a provider may not exceed 110 percent of the Medicare allowable rate for any services provided. The DJJ may continue to make payments for services to a provider at the current contracted rates through the current term of an executed contract.¹⁰² However, once that contract expires, payments may not exceed 110 percent of the Medicare allowable rate.

If a contract is executed on or after July 1, 2014, payments to providers for services may not exceed 110 percent of the Medicare allowable rate, unless the services are performed at a hospital that reports a negative operating margin for the previous fiscal year to the AHCA through hospital-audited financial data. In that instance, the DJJ may pay up to 125 percent of the Medicare allowable rate.

Repeal of Provisions

The bill removes obsolete provisions, including definitions in ch. 985, F.S., relating to dependency proceedings. Dependency proceedings are within the jurisdiction of the DCF and are addressed in ch. 39, F.S.

¹⁰¹ Similar provisions have been included annually in the Implementing Bill since the 2010-2011 fiscal year. *See*, Ch. 2010-153, s. 11, Laws of Fla., Ch. 2011-47, s. 19, Laws of Fla., Ch. 2012-119, s. 16, Laws of Fla.; and Ch. 2013-41, s. 41, Laws of Fla.

¹⁰² The bill allows for contracts to be renewed during the 2013-2014 fiscal year.

The bill repeals s. 945.75, F.S., relating to state correctional facility tours by juvenile offenders which violate federal law. This repeal will prevent the federal funding allocated to state juvenile justice programs from being compromised.

Effective Date

The bill takes effect July 1, 2014. However, the criminal offense of “willful and intentional neglect of a juvenile” that is created in new s. 985.702, F.S., has an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Families currently financially unable to access various services may have increased access to services, such as tutoring and counseling, as a result of the establishment of evening reporting centers.

Children currently subject to placement in secure detention for technical violations of probation may not be required to go into secure detention because CS/CS/SB 700 creates an alternative consequence option to handle noncompliance with the technical conditions of probation. This could assist these children with maintaining employment they currently have.

C. Government Sector Impact:

Department of Juvenile Justice

The bill caps the maximum bed number for all residential facilities at 90 beds, instead of the maximum bed number of 165 in current law. The DJJ currently has two residential facilities over the 90 bed limit, Riverside Academy which has 165 beds and Avon Park

Youth Academy which has 144 beds.¹⁰³ The DJJ reports the procurement process is already underway to place the excess beds at other facilities.¹⁰⁴

The bill amends s. 985.25, F.S., to require any child taken into custody on three or more separate occasions within a 60-day period to be placed in secure detention care until the detention hearing. The DJJ reports that 1,500 youth met this criteria in the last fiscal year, at a cost (clothing and food) per youth of \$5.16 per day. This change is estimated to cost an additional \$7,740 a year and could vary depending on how many nights each youth stays at a detention center. The DJJ indicates they can absorb this increased cost within existing resources.¹⁰⁵

The bill allows the DJJ to pay expenses in support of innovative programs and activities that address identified needs and the well-being of children in the DJJ's care or under its supervision. However, the bill specifies that these programs and activities must be accomplished within existing resources and the DJJ indicates that it can do so.¹⁰⁶

The bill allows the DJJ to permit direct support organizations to use the DJJ personnel services, which may have a fiscal impact on the DJJ. However, the DJJ indicates any new expenses will be absorbed within existing resources.¹⁰⁷

The bill adds new detention criteria which may result in some children being held in secure detention who would not otherwise have been detained, or being detained for longer periods of time. This will have an indeterminate impact on local government expenditures.

The DJJ may realize a positive fiscal impact from reduced recidivism rates as a result of the technical violation diversion program and increased supervision.

Office of State Courts Administrator (OSCA)

The OSCA indicates the following provisions of the bill will affect court operations:

- Requiring the courts to hold a hearing and ensure due process for juvenile offenders in direct contempt;
- Requiring the courts to provide a release date for offenders currently in detention; and
- Authorizing the courts to place children in alternative consequence programs for technical violations of probation.

Although the OSCA cannot accurately determine fiscal impact due to the unavailability of data needed to quantify the increase in judicial workload, the OSCA indicates they expect to be able to absorb additional workload with existing resources.¹⁰⁸

¹⁰³ Electronic mail from Jon Menendez, dated February 10, 2014 (on file with the Senate Judiciary Committee).

¹⁰⁴ *Id.*

¹⁰⁵ The DJJ, *2014 DJJ Bill Analysis for SB 700*.

¹⁰⁶ Electronic mail from Jon Menendez, dated February 12, 2014 (on file with the Senate Judiciary Committee).

¹⁰⁷ *Id.*

¹⁰⁸ Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 700* (February 25, 2014) (on file with the Senate Judiciary Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.0515, 316.635, 318.143, 985.01, 985.02, 985.03, 985.0301, 985.037, 985.039, 985.045, 985.11, 985.14, 985.145, 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.27, 985.275, 985.433, 985.435, 985.439, 985.441, 985.46, 985.461, 985.481, 985.4815, 985.514, 985.601, 985.632, 985.644, 985.66, 985.664, 985.672, 985.682, 985.69, 985.701, 985.721, and 943.0582.

This bill creates the following sections of the Florida Statutes: 985.17, 985.6441, and 985.702.

This bill repeals the following sections of the Florida Statutes: 985.105, 985.605, 985.606, 985.61, 985.694, and 945.75.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on March 19, 2014:

The committee substitute:

- Adds evaluation of cognitive impairment to the types of evaluations that may be performed as part of the comprehensive evaluation during the intake process.
- Provides that several types of newly authorized initiatives must be done within the DJJ's existing resources.
- Removes the Office of Economic and Demographic Research and the Office of Program Policy and Government Accountability from the team that develops a standard methodology for the Comprehensive Accountability Report.
- Removes language authorizing the DJJ to execute contracts with hospitals for rates other than rates based on the Medicare reimbursement cap.
- Provides that the effective date of the new criminal offense of "willful and malicious neglect of a juvenile" is October 1, 2014, rather than the effective date of the bill.
- Amends the definition of "child" in s. 985.03, F.S., to apply to both married and unmarried persons under the age of 18. Currently, a married person who is under the age of 18 is not considered to be a "child" unless he or she is charged with a violation of law.
- Includes a number of technical changes, including replacing the term "home detention" with "non-secure detention" in statutes that were not amended in CS/SB 700.

CS by Judiciary on March 4, 2014:

The committee substitute:

- Makes three technical corrections which do not change the substance of the bill.
- Provides legislative intent that the purpose of the juvenile justice system is to increase public safety and to place low and moderate-risk children in nonresidential programs.

B. Amendments:

None.

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