

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 1279

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Latvala

117 Y's

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**COMPANION
BILLS:** CS/HB 1322

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

HB 1279 passed the House on March 9, 2016, as CS/SB 1322. The bill creates s. 985.6865 F.S. establishing a new juvenile detention cost sharing methodology with the counties. This bill provides for differentiated cost sharing for counties that voluntarily dismiss existing and future claims against the state and those which do not.

The bill creates s. 985.6865 F.S. which:

- Establishes the intent of the legislature regarding administrative or judicial claims or challenges taken against the state and state agencies by non-fiscally constrained counties related to the share of juvenile detention costs.
- Defines "total shared detention costs" as the amount of funds expended by the Department of Juvenile Justice for the costs of detention care for the prior fiscal year, including the most recent certified forward amounts minus any funds expended on detention care for juveniles residing in fiscally constrained counties or out of state.
- Defines "fiscally constrained county" as a county in a rural area pursuant to s. 288.0656 F.S., or a county which the value of a mill will raise no more than \$5 million in revenue.
- Defines "detention care" as secure detention and respite beds for juveniles charged with a domestic violence crime.
 - Provides all non-fiscally constrained counties, which have filed a notice of voluntary dismissal of all actions against the state or any state agency and/or executed a release and waiver of any existing future claims and actions related to juvenile detention costs, to pay its annual percentage share of \$42.5 million in 12 equal payments on the first day of each month in FY 2016-17, and 50 percent of total shared detention costs in FY 2017-18 and thereafter.
 - Requires DJJ to calculate the annual percentage share of each county.

The bill amends s. 985.6015 F.S. and s. 985.688 F.S., removing the term "predisposition" when referring to juvenile detention costs.

The bill maintains the current cost sharing mechanism for counties that do not dismiss current and future claims against the state.

The bill appropriates \$7.3 million in recurring general revenue and \$3.5 million in nonrecurring general revenue funds to the Department of Juvenile Justice for the purpose of implementing the provisions in the bill.

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

STORAGE NAME: h1279z.JUAS

DATE: March 18, 2016

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

The DJJ operates a statewide secure detention system for youth who are charged with committing delinquent acts. The detention care process begins when the DJJ receives custody of a juvenile from a law enforcement agency which has taken the juvenile into custody:

- Upon assuming custody, the DJJ decides whether to place the juvenile in detention care as provided in s. 985.25, F.S., based upon an assessment of risk as provided in s. 985.245, F.S.
- If the DJJ places the juvenile in detention care, a court hearing must be held within 24 hours of the time that the juvenile was taken into custody. At the hearing, the court considers a number of factors to determine whether the juvenile should be kept in continued detention. Section 985.255, F.S., provides these factors, which include current offenses, prior history, legal status, and aggravating or mitigating factors.
- If the court orders the juvenile to be held in secure detention, the detention cannot extend beyond 48 hours unless the court holds another hearing and finds in writing that continued detention is necessary to protect the victim from injury.
- The juvenile may be held in detention until a disposition hearing is held to determine whether the juvenile committed a delinquent act and, if necessary, until the juvenile is sentenced.¹
- A juvenile who is adjudicated delinquent may be kept in detention for a limited time while awaiting placement in a residential commitment program.²

The detention program provides 24-hour care and supervision to juveniles in physically secure facilities, with educational programming provided by individual school districts. The DJJ detention staff transports detained youth to and from court and residential commitment facilities.

Currently, the DJJ operates secure detention facilities in 21 counties with a total of more than 1,300 beds. During Fiscal Year 2014-2015, the DJJ served a total of 15,580 individual youth in secure detention facilities. Marion County, Polk County, and Seminole County operate their own detention centers.

In 2004, the Legislature enacted s. 985.686, F.S., requiring joint financial participation by the state and counties in the provision of juvenile detention. The statute made counties responsible for pre-dispositional detention costs and the DJJ responsible for post-dispositional detention costs, costs for detention care in fiscally constrained counties,³ and costs for out-of-state youth. Beginning in 2004, the counties were held responsible for an average of 74 percent of detention costs and the state was responsible for an average of 26 percent. The DJJ's apportionment of costs has been a source of administrative litigation by counties.

¹ Section 985.26, F.S., provides that pre-hearing detention care is limited to 21 days unless the court has commenced an adjudicatory hearing in good faith. For certain serious offenses, the time may be extended to 30 days before an adjudicatory hearing is commenced. There are also provisions for continued detention beyond these limits to account for continuances granted by the court. In such cases, the court must hold a hearing at the end of every 72 hour period to determine whether continued detention is appropriate and whether further continuance of the hearing is needed.

² Sections 985.26 and 985.27, F.S., govern the length of time that a juvenile may be held in detention care after an adjudication of delinquency.

³ The term "fiscally constrained county" is currently defined to mean "a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1. Currently, 29 counties are considered fiscally constrained. Prior to 2014, the definition referred to a "rural area of critical economic concern" rather than a "rural area of opportunity," but included the same criteria.

In June 2013, the First District Court of Appeal (DCA) affirmed an administrative law judge's order invalidating rules that the DJJ had promulgated in 2010 to clarify the state and the counties' responsibilities. According to the order, the rules at issue shifted a greater responsibility for costs to the counties than was required by the relevant statute. The opinion had the effect of significantly decreasing the counties' fiscal responsibility and increasing the state's financial responsibility.⁴

Administrative petitions have been filed to contest reconciliations for fiscal years since 2008- 2009. The DJJ initially entered into stipulations relating to Fiscal Years 2009-2010, 2010-2011, and 2011-2012. These stipulations included all detention after violations of probation as solely in the state's share of costs. However, the DJJ subsequently determined the statute required that counties should pay for the costs of new law violations of probation and the state would pay for the costs of other violations of probation. In May 2014, the DJJ promulgated new rules to implement its understanding of the sharing of costs in accordance with the statute.⁵ The Florida Association of Counties and a number of individual counties filed administrative challenges to the new rule.⁶ In April 2015, the Division of Administrative Hearings (DOAH) upheld the DJJ's interpretation of "final court disposition" and other significant sections of the proposed rule.⁷ The decision is currently on appeal in the First DCA.⁸

In 2014 and 2015, a number of counties ceased to pay, or paid a reduced portion, of their share of the costs of detention costs due to their dispute concerning the DJJ's billing. The Implementing Bill for the Fiscal Year 2015-2016 General Appropriations Act included a requirement for the DJJ to notify the Department of Revenue (DOR) when counties don't pay their share of the costs, and for the DOR to transfer funds from the counties revenue sharing accounts to the DJJ to make up any shortfall.⁹ Volusia County has not paid its Fiscal Year 2015-2016 share, and Manatee and Okaloosa counties have made partial payments. These counties filed administrative petition challenging the revenue recovery provision in the DOAH.

On February 18, 2016, the First District Court of Appeals released an opinion, withdrawing a previous opinion from December 4, 2015 and providing a substitute opinion. The opinion provides instructions for the Department of Juvenile Justice to apply the appropriate amount of credit (or debit) to Appellant's account after calculating and accounting for actual costs as required by the statute, rule, and prior decisions.¹⁰

Effect of Proposed Changes:

The bill creates s. 985.6865, F.S., relating to shared county and state responsibility for juvenile detention.

The bill expresses that the intent of the legislature is for counties that have pending administrative or judicial claims or challenges against the state or state agency regarding juvenile detention cost sharing to file a notice of voluntary dismissal with prejudice to dismiss all related actions. The intent is also that all non-fiscally constrained counties execute a release and waiver of any existing and future claims and actions arising from detention cost share prior to the 2016-2017 fiscal year.

⁴ *Dep't of Juvenile Justice v. Okaloosa County*, 113 So.3d 1074 (Fla. 1st DCA 2013).

⁵ Rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017, Florida Rules of Administrative Procedure.

⁶ The petitioners were: Volusia County (Case No. 14-2799RP); Broward County (Case No. 14-2800RP); Orange County (Case No. 14-4512RP); and the Florida Association Of Counties and Alachua, Bay, Brevard, Charlotte, Collier, Escambia, Flagler, Hernando, Hillsborough, Lake, Lee, Leon, Manatee, Martin, Nassau, Okaloosa, Palm Beach, Pinellas, Santa Rosa, Sarasota, St. Johns, St. Lucie, and Walton counties (Case No. 14-2801RP). Duval County Jacksonville intervened in all the petitions.

⁷ DOAH Final Order in Case Nos. 14-2799RP, 14-2800RP, 14-2801RP and 14-4512RP (April 22, 2015), available at <https://www.doah.state.fl.us/ROS/2014/14002799.pdf> (last visited February 8, 2016).

⁸ *Volusia County v. Department of Juvenile Justice*, Case No. 1D15-2298 (Fla. 1st District Court of Appeal).

⁹ Section 38 of ch. 2015-222, Laws of Florida.

¹⁰ *Pinellas County v. Florida Department of Juvenile Justice*, Case No. 1D14-4187 (Fla. 1st District Court of Appeal).

The bill defines the term “total shared detention costs” to mean:

“The amount of funds expended by the department for the costs of detention care for the prior fiscal year. This amount includes the most recent actual certify forward amounts minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.”

The bill defines “fiscally constrained county” to mean:

“a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.”

For Fiscal Year 2016-2017, the bill requires non-fiscally constrained counties, which have filed notice to dismiss action against the state or state agencies and have executed a release and waiver of any existing future claims and actions regarding juvenile detention cost sharing, to pay a total of \$42.5 million, with each county paying its percentage share of detention use. A county’s percentage share of that amount is determined by dividing the number of juvenile detention days for juveniles residing in that county in the most recently completed 12-month period by the total number of detention days for juveniles in all non-fiscally constrained counties during that time period. The bill requires that the DJJ calculate and provide each county with its percentage share by June 1, 2016. Each county is then required to pay its percentage share in 12 equal payments on the first of each month, beginning on July 1, 2016. The state is required to pay the remaining actual costs of detention care.

Beginning in Fiscal Year 2017-2018, the bill will require non-fiscally constrained counties, which have filed notice to dismiss action against the state or state agencies and have executed a release and waiver of any existing future claims and actions regarding juvenile detention cost sharing, to annually pay a total of 50 percent of total shared detention costs for the prior fiscal year. The bill requires DJJ to provide each non-fiscally constrained county with its annual percentage share (based upon “the most recently completed 12-month period”) of total shared detention costs by June 1, 2017 for Fiscal Year 2017-2018 and each successive fiscal year thereafter. Beginning July 1, non-fiscally constrained counties must make payments in 12 equal installments to the DJJ on the first day of each month of the fiscal year.

The bill requires all funds paid by the counties to the department pursuant to s. 985.6865 F.S. to be deposited into the Shared County/State Juvenile Detention Trust Fund.

The bill states that funds received from the counties pursuant to section s. 985.6865 F.S. are not subject to the service charges provided in s. 215.20 F.S.

The bill requires the department to determine each quarter-year whether counties are remitting funds as required by s. 985.6866 F.S.

The bill allows for the Department of Juvenile Justice to adopt rules to implement the created section.

The bill continues current law requiring the state to pay the costs of detention in fiscally constrained counties, and codifies current practice by which the state pays detention costs for juveniles who are not residents of Florida.

Non-fiscally constrained counties which have pending claims or challenges filed against the state or state agencies regarding juvenile detention sharing, but do not take action to dismiss such claims, will continue to be billed pursuant to s.985.686 F.S. and by the current methodology in Florida Administrative Code 63G-1.

The bill removes references to predisposition juvenile detention from s. 985.6015(2), F.S., and removes references to preadjudication detention and preadjudication detention care from s. 985688(11) F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has a significant fiscal impact on state revenues. If all fiscally constrained counties comply with the intent of the legislature, funds owed by the counties for juvenile detention cost sharing would decrease from the total based on the current methodology by an estimated \$10.8 million in FY 16-17. The total cost would decrease from the total based on current methodologies by an estimated \$7.3 million in FY 17-18 and after, based on FY 14-15 shared detention data.¹¹

2. Expenditures:

The bill has a significant fiscal impact on state expenditures. If all fiscally constrained counties comply with the intent of the legislature, the State's share of juvenile detention costs would increase from the total based on current methodology by an estimated \$10.8 million in FY 16-17. The total would increase from the total based on the current calculation methodology by an estimated \$7.3 million in FY 17-18 and after. The projected totals are based on FY 14-15 data.¹²

The FY 2016-17 General Appropriations Act includes an \$10.8 million appropriation for the increase in detention cost sharing, with \$7.3 million recurring.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has no impact on local revenues.

2. Expenditures:

Non-fiscally constrained counties which comply with the intent of the Legislature regarding Juvenile Shared Detention, will pay their percentage share of \$42.5 million, based on the number of detention days per county, for FY 16-17. Beginning FY 17-18 and after, these counties would pay 50% of the cost of juvenile detention days in their county.

If all counties comply to the intent of the legislature, in FY 16-17, the counties would have an estimated collective savings of \$10.8 million, based on data from FY 14-15.¹³ In FY 17-18 and beyond, the counties detention cost share would be an estimated \$7.3 million less than under the current calculation methodology, based on FY 14-15 data.¹⁴

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No impact

¹¹ "Reconciliation 2014-15 Secure Detention Cost Sharing", Florida Department of Juvenile Justice, On File with the House Justice Appropriations Subcommittee.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

D. FISCAL COMMENTS:

Non-fiscally constrained counties which have never been involved in claims against the state or state agencies and have executed a release and waiver of any existing future claims and actions regarding juvenile detention cost sharing, would be in compliance with the intent of the legislature and their detention days would be calculated using the new methodologies.