

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1670

INTRODUCER: Senator Latvala

SUBJECT: Juvenile Justice

DATE: March 24, 2017

REVISED: 03/27/17

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u></u>	<u></u>	<u>ACJ</u>	<u></u>
3.	<u></u>	<u></u>	<u>AP</u>	<u></u>

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**I. Summary:**

SB 1670 makes numerous changes that increase the use of secure detention.

Specifically the bill:

- Creates the designation of a prolific juvenile offender;
- Requires that children who meet the criteria for the designation of prolific juvenile offender be held in detention until disposition;
- Requires the court to place children who are adjudicated and awaiting placement for a nonsecure residential commitment program in secure detention until they are placed in a residential commitment program;
- Requires that the period for detention be tolled on the date the Department of Juvenile Justice (DJJ) alleges the child has violated a condition of his or her detention until the court enters a ruling on the violation; and
- Requires a prolific juvenile offender's adjudicatory hearing be held within 45 days after the petition is filed.

The DJJ shares the costs of secure detention with the counties that are not fiscally constrained. The fiscal impact of this bill would be **\$6,938,462** (50 percent of which would be general revenue and 50 percent of which would be from the Shared Detention Trust Fund). The state's portion would total **\$3,469,231** and the counties' portion would be **\$3,469,231**. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2017.

## II. Present Situation:

### Detention of Juveniles

The Department of Juvenile Justice (DJJ) provides detention care to supervise juveniles charged with committing a crime or who are held pursuant to a court order. There are two types of detention care, secure and nonsecure detention. Secure detention is the temporary custody of a child while under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.<sup>1</sup>

Nonsecure detention is the temporary, nonsecure custody of a child while the child is released to the custody of the parent, guardian, or custodian under the supervision of the DJJ staff pending adjudication, disposition, or placement. There are numerous forms of nonsecure detention; they include home detention, electronic monitoring, and nonsecure shelters.<sup>2</sup>

The DJJ operates 21 secure detention facilities with 1,302 beds in 21 counties. During Fiscal Year 2015-16, a total of 15,142 children were served through secure detention, 11,463 were served through home detention, and 2,803 were served through electronic monitoring. There are three county-operated detention centers in Marion, Polk, and Seminole Counties.<sup>3</sup>

During Fiscal Year 2015-16, 2,437 children were committed to nonsecure residential commitment programs. These committed children awaiting placement in the community committed 4,308 new charges, including felonies, misdemeanors, and technical offenses. For that same period, 149 committed youth awaiting placement absconded during their time pending placement.<sup>4</sup>

### Pre-Adjudication Detention

Section 985.255, F.S., requires a child to have a detention hearing within 24 hours of being taken into custody and placed in detention. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention.<sup>5</sup>

During the period of time between when a child is taken into custody and the detention hearing, the DJJ makes the determination of whether a child should be placed in detention. The DJJ must make its decision on a risk assessment of the child.<sup>6</sup> The child must be placed in secure detention until the detention hearing if the child:

- Is charged with possessing or discharging a firearm on school property.

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<sup>1</sup> Section 985.03(18), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Department of Juvenile Justice, *2017 Agency Bill Analysis for SB 1670*, March 10, 2017, (on file with the Senate Criminal Justice Committee).

<sup>4</sup> *Id.*

<sup>5</sup> Section 985.255(3)(a), F.S.

<sup>6</sup> A risk assessment must take into consideration the child's prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. Section 985.245(2), F.S.

- Has been taken into custody on three or more separate occasions within a 60-day period.<sup>7</sup>

Section 985.24, F.S., requires that all determinations and court orders regarding the use of detention care must be based upon findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court by:
  - Intentionally disrupting the administration of the court;
  - Intentionally disobeying a court order; or
  - Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or
- Requests protection from imminent bodily harm.<sup>8</sup>

At a detention hearing, the court must determine the need for continued detention and use the results of the DJJ's risk assessment.<sup>9</sup> The court may order a child stay in detention, if the child is:

- Alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- Wanted in another jurisdiction for a felony offense.
- Charged with a delinquent act or violation of law and requests to be detained for protection from an imminent physical threat to his or her personal safety.
- Charged with committing an offense of domestic violence<sup>10</sup> and is detained.<sup>11</sup>
- Charged with possession of or discharging a firearm on school property or the illegal possession of a firearm.
- Charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., (drug offenses) or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.
- Charged with any second degree or third degree felony involving a violation of ch. 893, F.S., or any third degree felony that is not also a crime of violence, and the child:

<sup>7</sup> Section 985.25, F.S.

<sup>8</sup> Section 985.24(1), F.S.

<sup>9</sup> Section 985.255(3)(a), F.S., provides that a court does not have to use the DJJ's risk assessment in making its determination of detention if the child is detained because he or she is charged with a domestic violence offense, possession of or discharging a firearm on school property, or the illegal possession of a firearm.

<sup>10</sup> Section 741.28(2), F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. A family or household member includes: spouses; former spouses; persons related by blood or marriage; persons who are presently residing together as if a family or who have resided together in the past as if a family in the same single family dwelling unit; and persons who are parents of a child in common, regardless of whether they have been married.

<sup>11</sup> Section 985.255(2), F.S., allows a child to be held in secure detention if the court finds that respite care is not available and it is necessary to place the child in secure detention to protect the victim from injury.

- Has a record of failure to appear at court hearings;
- Has a record of law violations prior to court hearings;
- Has already been detained or has been released and is awaiting final disposition of the case;
- Has a record of violent conduct resulting in physical injury to others; or
- Is found to have been in possession of a firearm.
- Alleged to have violated the conditions of the child's probation or conditional release supervision.
- Detained on a judicial order for failure to appear and has previously willfully failed to appear:
  - For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
  - At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.<sup>12</sup>

If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court must state, in writing, clear and convincing reasons for such placement.<sup>13</sup>

### **Length of Detention**

Once a detention hearing has been held and the state has filed a petition alleging a child committed a delinquent act or a violation of law, an adjudicatory hearing must be held as soon as practicable.<sup>14</sup> A child cannot be held in detention for more than 21 days unless an adjudicatory hearing is held.<sup>15</sup> The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare for cases involving certain serious crimes.<sup>16</sup> Except as stated above, after the adjudicatory hearing, a child cannot be held in detention for more than 15 days.<sup>17</sup>

### **Post-Disposition Detention**

After the court finds that a child has committed a delinquent act, it must conduct a disposition hearing to determine the appropriate sanction for the child.<sup>18</sup> If the court places a child in a commitment program, the court must also place the child in detention care (secure or nonsecure) while awaiting placement in such commitment program.<sup>19</sup>

If the child is awaiting placement in a nonsecure residential program he or she can only be in secure or nonsecure detention for up to five days. The DJJ may seek an extension of the five-day

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<sup>12</sup> Section 985.255(1), F.S.

<sup>13</sup> Section 985.255(3)(b), F.S.

<sup>14</sup> Section 985.35(1), F.S.

<sup>15</sup> Section 985.26(2), F.S.

<sup>16</sup> These serious crimes include capital felonies, life felonies, and first or second degree felonies. Section 985.26(2), F.S.

<sup>17</sup> Section 985.26(3), F.S.

<sup>18</sup> Section 985.433, F.S.

<sup>19</sup> Section 985.27, F.S.

period to hold the child in detention care until the commitment placement is made. However, if the child is in secure detention, the continued detention cannot exceed 15 days.<sup>20</sup>

A child who violates his or her nonsecure detention or nonsecure detention with electronic monitoring can be placed in secure detention for five days for the first and each subsequent violation.<sup>21</sup>

If the placement for the child is a high- or maximum-risk residential program, the child must be held in secure detention until the placement is made.<sup>22</sup>

### III. Effect of Proposed Changes:

#### Pre-Adjudication Detention

The bill amends s. 985.255, F.S., to add to the criteria a court may consider at a detention hearing. The bill adds the criteria of whether the child is classified as a *prolific juvenile offender*. (Section 4).

The bill requires that the child be designated as a *prolific juvenile offender* if the child:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the current charge; and
- Has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
  - An arrest event for which a disposition<sup>23</sup> has not been entered;
  - An adjudication; or
  - An adjudication withheld.

The bill defines the term “arrest event” to mean an arrest for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction.

The bill excludes the charge that the child is currently arrested for and the felony offense that the child had been adjudicated of or had adjudication withheld in (bullets one and two above) from being counted as one of the 5 acts above (bullet three).

The bill also amends s. 985.24, F.S., to require the findings used to determine a child’s detention care include the finding that *the child is at risk for recidivism*. (Section 1).

Section 985.245, F.S., requires a risk assessment be used to determine a child’s detention care. The bill amends s. 985.245, F.S., to exclude a child designated as a prolific juvenile offender from such requirement. (Section 2).

<sup>20</sup> Section 985.27(1)(a), F.S.

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

<sup>22</sup> Section 985.27(1)(b) and (c), F.S.

<sup>23</sup> The bill defines disposition to mean the entry of a nolle prosequi for the charges, a dismissal of the case, or the entry of a disposition order by the court.

A child must be placed in secure detention until the detention hearing if he or she is charged with certain offenses. The bill amends s. 985.25, F.S., to include a child who is designated as a prolific juvenile offender to this list. **(Section 3).**

### **Length of Detention**

The bill requires a prolific juvenile offender to be held in secure detention until the disposition of his or her case. The bill defines the term “disposition” to mean the entry of a nolle prosequi for the charges, a dismissal of the case, or the entry of a disposition order by the court. **(Section 5).** The bill creates s. 985.26(4)(b), F.S., to establish a tolling period for juveniles who have violated a condition of detention until the court enters a ruling on the violation. The bill specifies that a court retains jurisdiction over a child for a violation of a condition of detention care during the tolling period. If the court finds that a child has violated his or her detention care, the number of days that the child served in detention care before commission of the violation is excluded from the normally applicable maximum detention periods of 21-days prior to the adjudicatory hearing and 15-days prior to disposition. This allows the court to continue such child’s detention care for another 21-days or 15-days, as applicable. **(Section 5).**

The bill also amends s. 985.35, F.S., relating to adjudicatory hearings, to require a prolific juvenile offender’s adjudicatory hearing be held within 45 days after the petition is filed alleging that he or she has committed a delinquent act or violation, unless a delay is requested by the child. **(Section 8).**

### **Post-Disposition Detention**

The bill amends s. 985.27, F.S., to require that all children who are adjudicated and awaiting placement in a commitment program be held in secure detention until placement or commitment. **(Section 7).**

### **Other**

The bill amends s. 985.265, F.S., **(Section 6)**, and s. 985.514, F.S., **(Section 9)**, to remove the reference of “secure” and “nonsecure” detention. The bill makes this change to consistently use “detention” care throughout ch. 985, F.S.

**Sections 10-16** amend ss. 790.22, 985.115, 985.13, 985.275, and 985.319, F.S., to reenact provisions to incorporate changes made by the bill.

The bill is effective October 1, 2017. **(Section 17).**

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

Because the bill results in the counties paying more for juvenile detention costs than what was previously required, the bill falls within the purview of the mandates provision of section 18, Art. VII of the Florida Constitution. Subsection (a) of section 18, Art. VII of the Florida Constitution provides in pertinent part that “no county or municipality shall

be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated.” The bill applies to all persons similarly situated, including the state and local governments. The bill does not include a legislative finding that the bill fulfills an important state interest.

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:

None.

C. Government Sector Impact:

The bill makes changes that increase the use of secure detention which will potentially exacerbate current stresses on detention staffing and turnover, which, if not addressed, will increase overtime costs and could lead to increased facility incidents. During Fiscal Year 2015-16, the DJJ expended \$6,842,317 in overtime for detention officers. The bill would increase detention utilization by 33 percent; estimating a similar increase to overtime costs at 33 percent would add **\$2,257,965**.<sup>24</sup>

The bill provides that children who meet the criteria for the designation of prolific juvenile offender be held in detention until disposition. Based on Fiscal Year 2015-16, the DJJ determined 371 youth would meet the definition of prolific juvenile offender. Based on this, the DJJ assumes it would serve 371 youth once and 185.5 (half) of these youth a second time, totaling 557 cases annually. The current average time to disposition for these youth is 71 days. The bill provides that the adjudicatory hearing of a prolific juvenile offender must be held within 45 days. The DJJ assumes that half of the population will have their disposition hearing within 45 days, while the other half will have their disposition hearing within the current average. The DJJ has determined the fiscal impact of this change to be **\$1,318,241**.

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<sup>24</sup> Department of Juvenile Justice, *2017 Agency Bill Analysis for SB 1670*, March 10, 2017, (on file with the Senate Criminal Justice Committee). Discussion in this part of the analysis of the fiscal impact is from this source. Unless otherwise noted, all information in this section of the analysis regarding the DJJ estimates is from this source.

The bill requires the court to place youth who are adjudicated and awaiting placement for a nonsecure residential commitment program in secure detention until they are placed. The DJJ has determined the fiscal impact on operational costs to be **\$3,362,256**.

The bill requires that the period for detention be tolled on the date the DJJ alleges the child has violated a condition of the child's detention care until the court enters a ruling on the violation. It is unclear the frequency with which this provision would be utilized to determine the fiscal impact. It could also exacerbate current stresses on detention staffing and turnover, which, if not addressed, will increase overtime costs and impact facility incidents.

The DJJ shares the costs of secure detention with the counties that are not fiscally constrained. The fiscal impact of this bill would be **\$6,938,462** (50 percent of which would be general revenue and 50 percent of which would be from the Shared Detention Trust Fund). The state's portion would total **\$3,469,231** and the counties' portion would be **\$3,469,231**.

Additionally, the bill would require the DJJ to determine if youth meet the definition of prolific juvenile offender to hold youth in secure detention until their detention hearing based on complex criteria. This would require modification of the Juvenile Justice Information System (JJIS) to identify these youth. The DJJ estimates the fiscal impact of this to be **\$44,528**; this cost would be in addition to the \$3,469,231.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.27, 985.35, and 985.514.

This bill reenacts the following sections of the Florida Statutes: 790.22, 985.115, 985.13, 985.245, 985.255, 985.275, and 985.319.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

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