

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 885 Juvenile Justice Programs and Detention

SPONSOR(S): Judiciary Committee and Criminal Justice & Public Safety Subcommittee, Plasencia and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1166

FINAL HOUSE FLOOR ACTION: 119 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 885 passed the House on April 21, 2021, and subsequently passed the Senate on April 22, 2021.

Section 20.316, F.S., establishes the Department of Juvenile Justice (DJJ), and directs the Governor to appoint a Secretary of DJJ to plan, coordinate, and manage all juvenile justice programs within the State. The DJJ Secretary oversees, and may assign an assistant secretary to each statutorily created program. In 2020, the General Appropriations Act implementing bill temporarily created the Accountability and Program Support program and renamed the Prevention program within DJJ. With these changes, the DJJ Secretary was able to appoint an assistant secretary to oversee the Accountability and Program Support program and consolidate DJJ's oversight and monitoring efforts, enabling more effective management of nearly 200 private contracts. However, the changes made by the implementing bill are set to expire on July 1, 2021.

Juvenile detention care means temporary care in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order. When a child is detained, a court must conduct a detention hearing within 24 hours to determine whether further detention is necessary, and may order continued detention only under specified circumstances, including when a child fails to appear for an adjudicatory hearing or at two or more court hearings of any kind. In Florida, payment for juvenile detention care costs are determined by county and may be paid solely by the county or may be paid for in-part or entirely by the State. The State is currently required to share detention care costs with non-fiscally constrained counties based on an annual percentage share of total shared detention costs. However, prior to 2016, juvenile detention cost sharing was governed by s. 985.686, F.S., which provides that non-fiscally constrained counties are responsible for all costs of preadjudicatory detention care, with certain exceptions. This previous cost-sharing method led to litigation between counties and DJJ, and in response, the Legislature passed s. 985.6865, F.S., creating the current cost-sharing method, but requiring a county to dismiss any pending legal action to participate in the new cost-sharing plan.

CS/CS/HB 885 permanently establishes the Accountability and Program Support and Prevention programs. The bill also amends the current detention cost sharing plan to ensure that a non-fiscally constrained county providing its own detention care is not required to participate in detention cost sharing. The bill repeals s. 985.686, F.S., which provides an obsolete detention cost sharing plan which applied prior to 2016 and removes references to litigation concerning the obsolete plan.

The bill requires a court to consider specified criteria before issuing an order to take a child into custody for failing to appear in court. The bill requires specified entities in all judicial circuits to collaborate and develop a written plan for determining appropriate alternative incentives, as well as consequences, applicable when a juvenile commits a technical violation of his or her probation, and requires that such incentives and consequences be included in the child's disposition order. The bill also authorizes DJJ, during Fiscal Year 2021-22, in consultation with the Department of Education, to evaluate an alternative model for providing and funding education services for youth in detention and residential facilities.

The bill may have an indeterminate positive fiscal impact on state and local governments.

The bill was approved by the Governor on June 29, 2021, ch. 2021-219, L.O.F., and became effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Section 20.316, F.S., establishes the Department of Juvenile Justice (DJJ), and directs the Governor to appoint a Secretary of DJJ (Secretary) who is responsible for planning, coordinating, and managing all juvenile justice services and programs within the state, including all: children-in-need-of-services programs; families-in-need-of-services programs; other prevention, early intervention, and diversion programs; detention centers and related programs and facilities; community-based residential commitment and nonresidential programs; and delinquency institutions provided or funded by DJJ. The Secretary is statutorily assigned duties relating to DJJ programs and services, including, but not limited to:

- Ensuring DJJ programs and services are implemented according to legislative intent; state and federal laws, rules, and regulations; statewide program standards; and performance objectives by reviewing and monitoring regional and circuit program operations and providing technical assistance to those programs.
- Identifying the need for and recommending the funding and implementation of an appropriate mix of programs and services within the juvenile justice continuum, including prevention, diversion, nonresidential and residential commitment programs, training schools, and conditional release programs and services, with an overlay of educational, vocational, alcohol, drug abuse, and mental health services where appropriate.
- Establishing program policies and rules and ensuring that those policies and rules encourage cooperation, collaboration, and information sharing with community partners in the juvenile justice system to the extent authorized by law.¹

DJJ Programs

The Secretary is currently responsible for the following six statutorily created programs within DJJ:²

- Accountability and Program Support – Ensures programs operated or contracted by DJJ effectively provide for the safety, well-being, and treatment of youth under the State's care.³
- Administration – Responsible for providing services to department staff, including but not limited to, financial, computer information systems, personnel, and general services.⁴
- Intake and Detention – DJJ currently operates 21 secure detention centers in 21 counties.⁵
- Prevention – Offers voluntary youth crime prevention programs throughout the state.⁶
- Probation and Community Corrections – A juvenile who is placed on probation is supervised by a Juvenile Probation Officer (JPO), who helps the juvenile develop a youth-empowered success plan, monitors compliance, and helps connect the juvenile with other service providers.⁷
- Residential and Correctional Facilities – Oversees DJJ's development, maintenance, and management of facilities/programs that meet the needs of Florida's delinquent youths and promote public safety.⁸

The Secretary may establish assistant secretary positions and a chief of staff position for each program.⁹ Prior to 2020, the Prevention program was titled Prevention and Victim Services and the

¹ S. 20.316(1)(c), F.S.

² S. 20.316(2), F.S.

³ The Department of Juvenile Justice, *Office of Accountability and Program Support*, <http://www.djj.state.fl.us/services/support/OPA> (last visited Apr. 23, 2021).

⁴ The Department of Juvenile Justice, *Office of Administrative Services*, <http://www.djj.state.fl.us/services/support/administration> (last visited Apr. 23, 2021).

⁵ The Department of Juvenile Justice, *Detention Services*, <http://www.djj.state.fl.us/services/detention> (last visited Apr. 23, 2021).

⁶ The Department of Juvenile Justice, *Prevention Services*, <http://www.djj.state.fl.us/services/prevention> (last visited Apr. 23, 2021).

⁷ The Department of Juvenile Justice, *Probation & Community Intervention*, <http://www.djj.state.fl.us/services/probation> (last visited Apr. 23, 2021).

⁸ The Department of Juvenile Justice, *Residential Services*, <http://www.djj.state.fl.us/services/residential> (last visited Apr. 23, 2021).

⁹ *Id.*

Accountability and Program Support program was not statutorily established or funded. However, the implementing bill for the General Appropriations Act for Fiscal Year (FY) 2020-21 renamed the Prevention and Victim Services program the Prevention program, because victim services are no longer provided by DJJ. The implementing bill also created the Accountability and Program Support program, allowing the DJJ Secretary to appoint an assistant secretary to oversee the Accountability and Program Support program and consolidate DJJ's oversight and monitoring efforts, enabling more effective management of nearly 200 private contracts.¹⁰ The changes made by the implementing bill will expire on July 1, 2021, unless otherwise reenacted.

Juvenile Detention Cost Sharing

In Florida, the payment of detention care costs for juveniles is determined by county, and may be the responsibility of the county alone or may be paid for in-part or entirely by the State. The State must pay all detention care costs for a juvenile:¹¹

- Residing in a fiscally constrained county;¹²
- Residing outside of Florida; or
- Who is housed in a state-run detention center, but is from a county that provides its own juvenile detention care.

The State is currently required to share detention care costs with non-fiscally constrained counties operating in cooperation with DJJ based on each county's annual percentage share of total shared detention costs. However, prior to 2016, juvenile detention cost sharing was governed by s. 985.686, F.S., which provides that non-fiscally constrained counties are responsible for all costs of providing preadjudicatory detention care, except for costs associated with nonmedical, educational or therapeutic services. This cost-sharing methodology led to litigation between counties and DJJ.¹³

In 2016, in response to the cost-sharing litigation, the Legislature passed s. 985.6865, F.S., creating a new cost sharing method.¹⁴ However, to participate in the new cost-sharing plan, a county was required to dismiss any legal action against the State related to the previous cost-sharing plan. Section 985.6865, F.S., provides that, notwithstanding s. 985.686, F.S., beginning in FY 2017-18 and each fiscal year thereafter, a non-fiscally constrained county that has dismissed any legal action relating to cost-sharing under s. 985.686, F.S., must pay an annual percentage share of 50 percent of the total annual shared detention costs.^{15, 16}

A non-fiscally constrained county's annual percentage share is calculated by dividing the total number of detention days for juveniles residing in the county for the most recent 12-month period by the total number of detention days for juveniles in all non-fiscally constrained counties during the same period. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.¹⁷

A county required to pay a share of detention costs must incorporate funds to pay shared detention costs into the county's annual budget.¹⁸ Funds DJJ receives from cost-sharing must be deposited into

¹⁰ Florida Department of Juvenile Justice, Agency Analysis of HB 885, p. 2 (Feb. 22, 2021).

¹¹ S. 985.6865(5), F.S.

¹² A "fiscally constrained county" is a county within a rural area of opportunity, as designated by the Governor under 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 under s. 1011.62(4)(a)1.a., F.S., from July 1 of the previous year. S. 985.6865(3)(b), F.S.

¹³ Various counties and DJJ have engaged in numerous legal proceedings, including administrative or judicial claims, regarding detention cost sharing for juveniles. This litigation has focused mainly on how DJJ calculates detention costs counties are responsible for paying, leading to the overbilling of counties for a period of years. S. 985.6865(1) and (2), F.S.

¹⁴ Ch. 2016-152, Laws of Fla.

¹⁵ S. 985.6865(4), F.S.

¹⁶ DJJ indicates that Polk and Seminole counties chose not to dismiss their lawsuits relating to cost-sharing, and in 2019 won their lawsuits and were compensated for their overpayment of services. Polk and Seminole counties continue to operate their detention facilities independently. Department, *supra* note 10.

¹⁷ S. 985.6865(4), F.S.

¹⁸ S. 985.6865(6), F.S.

the Shared County/State Juvenile Detention Trust Fund,¹⁹ and DJJ must determine quarterly whether each county is complying with cost-sharing requirements.²⁰

Juvenile Detention

“Detention care” is the temporary care of a child in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order:²¹

- “Secure detention” is temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- “Supervised release detention” is temporary, nonsecure custody of a child when he or she is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment while being supervised by DJJ staff pending adjudication or disposition through programs such as, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.²²

When a child is detained, a court must conduct a detention hearing within 24 hours to determine if there is probable cause that the child committed a delinquent act or violation of law and whether further detention is necessary.²³ At the hearing, the court may order continued detention care only if the:

- Risk assessment instrument²⁴ indicates secure or supervised release detention is appropriate.
- Child is alleged to have: escaped from a residential commitment program or while being lawfully transported to or from a residential commitment program; or absconded from a nonresidential commitment program, probation program, or conditional release supervision.
- Child is detained, regardless of the results of his or her risk assessment instrument, for failing to appear after proper notice:²⁵
 - For an adjudicatory hearing in the same case; or
 - At two or more court hearings of any kind in the same case.²⁶

If a child meets the qualifications for continued detention, he or she may be held in secure detention for up to 72 hours before the next scheduled court hearing. However, even if a child meets the qualifications for continued detention, he or she may not be detained for longer than 21 days without an adjudicatory hearing, unless the court grants an extension for good cause.²⁷

DJJ indicates that under current law, courts often order secure detention for a child’s failure to appear because the court may not be aware of the circumstances resulting in his or her failure to appear. This often results in a child being held in secure detention without consideration of factors such as whether the youth was properly notified, the seriousness of the underlying offense, or whether the child had access to proper transportation.²⁸

Juvenile Probation

After a child is found to have committed a delinquent act, the court must hold a disposition hearing.²⁹ A juvenile disposition hearing is comparable to criminal sentencing. The court must review DJJ’s predisposition report which recommends the most appropriate placement and treatment plan.³⁰ The

¹⁹ S. 985.6865(7), F.S.

²⁰ S. 985.6865(8), F.S.

²¹ S. 985.03(18), F.S.

²² *Id.*

²³ S. 985.26, F.S. This type of hearing is similar to a first appearance in an adult criminal case.

²⁴ S. 985.245, F.S.

²⁵ A child’s failure to keep the clerk of court and defense counsel informed of a current mailing address is not an adequate excuse for the child’s failure to appear. S. 985.255(1), F.S.

²⁶ S. 985.255(1), F.S.

²⁷ S. 985.26(2), F.S.

²⁸ Florida Department of Juvenile Justice, Agency Analysis of HB 885, p. 2 (Feb. 22, 2021).

²⁹ S. 985.433, F.S.

³⁰ S. 985.433(7)(a), F.S.

court may deviate from DJJ's recommendations but must include appropriate written findings in the disposition order.³¹

A juvenile disposition order is similar to a judgment and sentence in criminal court. Under s. 985.433, F.S., if the court finds that a child should be adjudicated delinquent,³² the court may order the child into:

- Residential commitment with DJJ at a specified restrictive level;³³
- Residential commitment with DJJ at a specified restrictive level, followed by community-based sanctions;³⁴ or
- A probation program which must include a penalty component, such as community-based sanctions,^{35, 36} and a rehabilitative component.³⁷

Community-based sanctions may include, but are not limited to:

- Participation in substance abuse treatment;
- Participation in a day-treatment program;
- Restitution in money or in kind;
- A curfew;
- Revocation or suspension of the child's driver license;
- Community service; and
- Appropriate educational programs.³⁸

A probation program for a child adjudicated delinquent must include a penalty component,³⁹ and a rehabilitative program component.⁴⁰ A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new law violations. The alternative consequence component is designed to provide swift and appropriate consequences to any noncompliance with technical conditions of probation. If the probation program includes this component, specific consequences for noncompliance must be detailed in the disposition order.⁴¹

Examples of technical violations include missing classes at school or missing curfew. When responding to these violations, some JPOs are able to use an Effective Response Matrix to ensure the most appropriate responses are considered prior to a formal violation being filed. This can include increased community supervision, community service, truancy court and other rehabilitative alternatives. However, in some areas of the state, courts have not developed and approved such techniques to address technical violations. As such, in these areas, law enforcement or a JPO may be required to submit a formal violation of probation notification resulting in a child being re-arrested and held in secure detention prior to a formal court hearing.⁴²

Educational Services in DJJ Programs

³¹ S. 985.433(7)(b), F.S.

³² Except as the term "conviction" is used in ch. 322, F.S., and except for use in a subsequent proceeding under ch. 985, F.S., an adjudication of delinquency shall not be deemed a conviction; nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication; nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction or to disqualify or prejudice the child in any civil service application or appointment, with the exception of the use of records of proceedings under ch. 985, F.S., as provided in s. 985.045(4), F.S. S. 985.35(6), F.S.

³³ S. 985.433(7)(b), F.S.

³⁴ S. 985.433(7)(c), F.S.

³⁵ S. 985.433(8), F.S.

³⁶ S. 985.435(2), F.S.

³⁷ S. 985.435(3), F.S.

³⁸ *Id.*

³⁹ S. 985.435(2), F.S., provides a penalty component may include restitution, community service, a curfew, revocation or suspension of the driver license, or other nonresidential punishment appropriate to the offense.

⁴⁰ S. 985.435(3), F.S., provides a rehabilitative component may include a substance abuse treatment program, or a school or career and technical education program.

⁴¹ S. 985.435(4), F.S.

⁴² Florida Department of Juvenile Justice, Agency Analysis of HB 885, p. 3 (Feb. 22, 2021).

Section 1003.52, F.S., requires specified educational services to be provided to children in DJJ programs and establishes the educational expectations for DJJ youth in such programs.⁴³ The Department of Education (DOE) is the lead agency for juvenile justice education programs, curriculum, support services, and resources; however, district school boards are responsible for actually providing educational services to youth in juvenile justice programs.⁴⁴ Educational services consist of basic academic, career, or exceptional curricula that support treatment goals and reentry, and that may lead to the completion of a high school diploma or its equivalent.⁴⁵ These services can be provided by the district school board itself or by a private provider through a contract with the district school board.⁴⁶

Annually, DJJ and DOE must develop a cooperative agreement and plan for juvenile justice education service enhancement, which must be submitted to the Secretary of DJJ and the Commissioner of Education. The plan must include, at a minimum, each agency's role regarding educational program accountability, technical assistance, training, and coordination of services.⁴⁷

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

- Curriculum and delivery of instruction;
- Classroom management procedures and attendance policies;
- Procedures for provision of qualified instructional personnel;
- Improving skills in teaching and working with juvenile delinquents;
- Transition plans for students moving into and out of juvenile facilities; and
- Deficiencies found through the quality assurance process and strategies for correcting such deficiencies.⁴⁸

Effect of the Bill

CS/CS/HB 885 permanently establishes the Accountability and Program Support and Prevention programs. The bill amends s. 985.6865, F.S., to ensure that a non-fiscally constrained county providing its own detention care is not required to participate in detention cost sharing. The bill repeals s. 985.686, F.S., which provides an obsolete detention cost sharing plan which applied prior to 2016 and removes references to litigation concerning the obsolete plan.

The bill requires a court to consider all of the following information relating to a child's failure to appear in court, before the court issues an order to take a child into custody:

- Whether notice was sent to the child's address included in the official court records;
- Whether any person provided notice to the child in any format;
- If the child is represented by counsel, whether counsel for the child has information that the child's nonappearance was not willful or was otherwise beyond the child's control;
- Whether a DJJ representative contacted or attempted to contact the child; and
- Whether DJJ has any other specific information to assist the court in making the determination.

This bill also requires judges, the state attorney, the public defender, the regional counsel, and relevant law enforcement agencies in each judicial circuit to work together in developing a written plan specifying the alternative consequence components available when a juvenile commits a technical violation of his or her probation. Such plans must be based on the principle that sanctions must consider and reflect:

- The severity of the technical violation;
- The child's individual criminogenic needs;
- The child's age and maturity level; and

⁴³ S. 1003.52, F.S.

⁴⁴ S. 1003.52(1), (3), and (4), F.S.

⁴⁵ S. 1003.52(5), F.S.

⁴⁶ S. 1003.52(11), F.S.

⁴⁷ S. 1003.52(1), F.S.

⁴⁸ S. 1003.52(14), F.S.

- How effective the alternative component will be in motivating the child to comply with his or her probationary terms.

The bill requires that alternative consequence components be designed to provide swift and appropriate incentives, as well as consequences, for technical violations. While such alternative consequence components are not required, if a child's probation program includes an alternative consequence component, the bill requires the child's disposition order to specify the appropriate incentives intended to motivate the child toward compliant behavior, as well as the consequences, applicable to each technical violation. As such, the bill may allow DJJ and courts to more efficiently and appropriately respond to low-level technical violations.

The bill also amends s. 1003.52, F.S., to authorize DJJ, during FY 2021-22, in consultation with the DOE, to evaluate the viability of an alternative model for providing and funding education services for youth in detention and residential facilities. The authorized evaluation must include material gathered through a request for information process, and the alternative model must provide for assessments and direct educational services, including, but not limited to:

- Special education and career and technical educational services;
- Transition planning;
- Educational program accountability standards;
- Research-based best practices for educating justice-involved youth; and
- The recruiting, hiring, and training of teachers.

The bill reenacts several corresponding statutes to incorporate changes made by the bill.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on state government. See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on state government. See *Fiscal Comments*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill will likely decrease the number of juveniles held in secure detention for failing to appear or violating probation, which may reduce expenditures by both the state and counties for juvenile detention costs.⁴⁹ Additionally, the bill is likely to reduce the number of detention hearings conducted for children securely detained for failing to appear, which may reduce court expenditures.⁵⁰

The requirement for each judicial circuit to develop, in consultation with judges, the state attorney, the public defender, the regional counsel, relevant law enforcement agencies, and DJJ, a written plan for violation of probation sanctions may result in minimal costs to each entity involved, however, such costs can likely be absorbed within each entity's existing resources.

⁴⁹ Florida Department of Juvenile Justice, Agency Analysis of HB 885, p. 4 (Feb. 22, 2021).

⁵⁰ Office of the State Court Administrator, 2021 Judicial Impact Statement – CS for SB 1166 (Companion Bill to HB 885), p. 3 (Mar. 13, 2021).