

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7055      PCB CRJS 14-01      Juvenile Justice

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

**TIED BILLS:**                      **IDEN./SIM. BILLS:** CS/CS/SB 700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	12 Y, 0 N	Cox	Cunningham
1) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	deNagy	Lloyd
2) Judiciary Committee		Cox	Havlicak

### SUMMARY ANALYSIS

Chapter 985, F.S., provides the framework for the juvenile justice system in Florida and authorizes the Department of Juvenile Justice (DJJ) to administer services and provide care to the state's delinquent children. The bill amends a variety of statutes in ch. 985, F.S., relating to DJJ, its duties, and its programs. Specifically, the bill:

- Updates legislative intent language and definitions applicable to ch. 985, F.S.;
- Modifies procedures relating to jurisdiction, contempt of court, fingerprinting and photographing, and intake assessments;
- Revises and expands the detention care system;
- Provides authority to the department to develop, within existing resources, evening reporting centers and community re-entry teams;
- Expands the department's notification requirements to a school or victim when the custody status of a youth has changed;
- Allows technical violations to be resolved through alternative consequence programs;
- Broadens the application of transition-to-adulthood services to youth of all ages;
- Expands when a misdemeanor youth may be committed to a residential program;
- Creates a new offense relating to "willful and malicious neglect" of juvenile offenders;
- Enhances the performance accountability system for service providers; and
- Limits the amount paid to hospitals and health care providers who are not under contract with the department for health care services provided to juveniles.

The bill also amends a variety of statutes in ch. 985, F.S., to make conforming changes, correct statutory cross-references, update terminology, and to delete obsolete provisions.

The bill does not appear to have a fiscal impact on local governments, but is expected to have a minimal fiscal impact on DJJ. DJJ has stated that they will be able to handle the increased costs within their existing resources. See FISCAL COMMENTS.

Except as otherwise provided, the bill is effective on July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### DJJ / HRS

In years past, all "proceedings relating to children" were under the auspices of the Department of Health and Rehabilitative Services (HRS). These proceedings included dependency and delinquency cases.<sup>1</sup> In 1994, the Legislature created the Department of Juvenile Justice (DJJ), which was assigned responsibility for juvenile delinquency cases and children and families in need of services (CINS/FINS) cases. HRS retained jurisdiction of dependency cases. Despite this bifurcation, the statutes relating to delinquency and dependency remained together in ch. 39, F.S.<sup>2</sup>

In 1997, the Legislature transferred the juvenile justice provisions of ch. 39, F.S., into ch. 984, F.S., (relating to CINS/FINS) and ch. 985, F.S., (relating to juvenile delinquency cases).<sup>3</sup> However, a handful of provisions relating to dependency were inadvertently included in the transfer.

##### Effect of the Bill

The bill removes obsolete provisions throughout ch. 985, F.S., relating to dependency proceedings. Dependency proceedings are currently addressed in ch. 39, F.S.

##### **Legislative Intent (Sections 1 and 2)**

Sections 985.01 and 985.02, F.S., contain legislative intent for ch. 985, F.S. Section 985.01, F.S., addresses the purposes of ch. 985, F.S., as a whole, while s. 985.02, F.S., provides more detailed legislative intent language specific to certain juvenile justice topics.

##### Effect of the Bill

The bill amends existing portions of s. 985.01, F.S., to specify that it is the purpose of ch. 985, F.S., to:

- Provide *victims* due process while involved in the juvenile justice system (current law only addresses due process for children and "other interested parties");
- Provide an environment that fosters *educational* development (current law only refers to social, emotional, intellectual, and physical development); and
- Provide children committed to DJJ technical education, when appropriate (current law only refers to training in life skills, including career education).

The bill creates new provisions in s. 985.01, F.S., specifying that the purpose of ch. 985, F.S., is to:

- Increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen and reform the lives of children;
- Care for children in the least restrictive and most appropriate service environments to ensure that children assessed as low and moderate risk to reoffend are not committed to residential programs; and
- Allocate resources for the most effective programs, services, and treatments to ensure that children, their families, and their community support systems are connected with these programs at the points along the juvenile justice continuum where they will have the most impact.

The bill amends existing portions of s. 985.02, F.S., to:

- Remove duplicative legislative intent language relating to detention care (similar language is found in s. 985.01, F.S.);
- Specify that the Legislature finds that secure detention is appropriate to provide punishment *for children who pose a threat to public safety* (current law specifies secure detention is appropriate to discourage further delinquent behavior);

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<sup>1</sup> *History of the Juvenile Justice System in Florida*, <http://www.djj.state.fl.us/about-us/history> (last visited on February 13, 2014).

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

<sup>3</sup> *Id.*

- Specify that the Legislature finds the placement of facilities close to the home communities of the children they house is intended to facilitate family involvement in the treatment process;
- Specify that the Legislature finds that residential facilities must have no more than 90 (rather than 165) beds each;
- Remove language specifying that “the Legislature finds that the detention services should exceed the primary goal of providing safe and secure custody pending adjudication and disposition;” and
- Explain what gender-specific programming should entail and why gender-specific programming is important for reducing juvenile delinquency.

The bill also adds new legislative findings to s. 985.02, F.S., relating to two specific topic areas - “trauma-informed care” and “family and community engagement.”

- The section addressing trauma-informed care provides that the DJJ should use trauma-informed care<sup>4</sup> as an approach to treating children with histories of trauma and explains that this method of care is preferred for such children because it assists with preventing retraumatization of the child.
- The section addressing family and community engagement provides that families and community support systems are critical to ensuring children are not delinquent; specifies that children should be served and treated in their homes and diverted from restrictive placements, when appropriate; and provides that DJJ should develop customized plans which “recognize the child’s individual strengths, reduce their risks, and prepare them for a successful transition to, and unification with, their family and community support system.”

### **Definitions (Section 3)**

Section 985.03, F.S., provides definitions that apply to the chapter.

#### Effect of the Bill

The bill amends s. 985.03, F.S., to define the following terms:

- “Abscond” is defined to mean to hide, conceal, or absent oneself from the jurisdiction of the court or supervision of the department to avoid prosecution or supervision;
- “Prevention” is defined to mean programs, strategies, initiatives, and networks designed to keep children from making initial or further contact with the juvenile justice system; and
- “Trauma-informed care” is defined to mean services that are provided to children with a history of trauma, recognizing the symptoms of trauma and acknowledging 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.

The bill amends the existing definitions of the following terms:

- “Child,” “juvenile,” and “youth” are amended to mean any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years;
- “Comprehensive Assessment,” “assessment,” and “day treatment” are amended to refer to “career and technical education,” rather than “vocational” services;
- “Conditional release” is amended to include transition-to-adulthood services;
- “Intake” is amended to allow juvenile assessment center personnel (rather than just DJJ personnel) to accept and screen a report of delinquency;
- “Temporary release” is amended to no longer apply to periods of time when the child is supervised pursuant to conditional release program or supervised by DJJ staff.

The bill deletes definitions for the following terms, which refer to the dependency system: “child support,” “foster care,” “habitually truant,” “halfway house,” “shelter hearing,” and “staff-secure shelter.”

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<sup>4</sup> The bill defines “trauma-informed care” in s. 985.03, F.S., 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.

The bill also deletes definitions for the following terms, as they have been replaced by “prevention services:” “delinquency prevention programs” and “preventative services.”

The terms “detention care” and “restrictiveness levels” are also amended in this bill. However, both have a significant effect on the substantive areas of the juvenile justice system and thus are addressed in the appropriate substantive portions of this analysis.

#### **Jurisdiction (Section 4)**

Section 985.0301, F.S., specifies that Florida’s circuit courts have exclusive original jurisdiction of proceedings in which a child is alleged to have committed a violation of law. Jurisdiction attaches to the child by service of the summons upon the child and a parent or when the child is taken into custody, whichever first occurs.<sup>5</sup>

Currently, the circuit court where the 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.<sup>6</sup> A child who has been detained must be transferred to the appropriate detention center or facility or other placement directed by the court receiving the case.<sup>7</sup>

The court retains jurisdiction over a child until the child:

- Reaches 19 years of age, if the child’s case has not been resolved;
- Reaches 19 years of age, if the child is ordered to participate in a probation program, which includes participation in transition-to-adulthood services;
- Reaches 21 years of age, if the child is committed to DJJ;
- Reaches 22 years of age, if the child is committed to DJJ for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program;<sup>8</sup>
- Reaches 21 years of age, if the child is committed to 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;
- Reaches 21 years of age, if the child is committed to a juvenile correctional facility or a juvenile prison, specifically for the purpose of allowing the child to complete such program;
- Reaches 21 years of age, 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
- Satisfies any restitution ordered in the case.<sup>9</sup>

#### **Effect of the Bill**

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 such 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 the above-described age-based jurisdictional criteria. As a result, the court will retain jurisdiction over a child until the child:

- Reaches 19 years of age, generally, or if the child is in a probation program;
- Reaches 21 years of age, if the child is committed to DJJ in any type of commitment program, specifically for the purpose of allowing the child to complete the commitment program, including conditional release supervision;
- Reaches 21 years of age, 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 purpose of completing the program;
- Satisfies any restitution ordered in the case.

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<sup>5</sup> Section 985.0301(2), F.S.

<sup>6</sup> Section 985.0301(4)(a), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> This is solely for the child to complete a conditional release program. Section 985.0301(5)(d), F.S.

<sup>9</sup> Section 985.0301(5), F.S.

## Prevention (Section 13)

Currently, ch. 985, F.S., does not include statutes specifically relating to prevention services.

### Effect of the Bill

The bill creates s. 985.17, F.S., relating to prevention services. This section specifies that the Legislature finds that:

- Prevention services decrease recidivism by addressing the needs of at-risk youth and their families, preventing further involvement of such youth in the juvenile justice system, protecting public safety, and facilitating successful reentry into the community; and
- To assist with decreasing recidivism, prevention services must strengthen protective factors and reduce risk factors using tested and effective approaches.

The bill requires DJJ to:

- Engage faith and community-based organizations to provide a full range of voluntary programs and services to prevent and reduce juvenile delinquency;<sup>10</sup>
- 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 to prevent juvenile delinquency;<sup>11</sup>
- Focus prevention services on preventing initial or further involvement with the juvenile justice system by including certain services (e.g., literacy and gender-specific programs) and included targets services to troubled, truant, ungovernable, abused, trafficked, and runaway youth;
- Ensure their 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.

The bill incorporates language into s. 985.17, F.S., that is currently found in two sections that are being repealed by the bill (ss. 985.605 and 985.606, F.S.). This language requires DJJ to expend prevention-related funds in a manner that maximizes accountability to the public and ensures the documentation of outcomes. The bill provides that as a condition of receipt of state funds, entities that receive or use state moneys to fund prevention services through contracts with DJJ or grants from any entity must:

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

The bill requires DJJ to monitor the output and outcome measures for each program strategy and annually report this data in the Comprehensive Accountability Report. The bill also requires DJJ 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 all provisions in the contracts and grants.

## Intake Process (Sections 11 and 12)

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<sup>10</sup> The bill further provides that the voluntary programs and services include, but are not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

<sup>11</sup> The bill further requires 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.

Every child under the age of 18 charged with a crime in Florida is referred to DJJ.<sup>12</sup> Intake and screening services for youth referred to DJJ are performed at a Juvenile Assessment Center (JAC),<sup>13</sup> but must be performed by a DJJ employee.<sup>14</sup> Once brought into intake, DJJ assigns the child a juvenile probation officer (JPO), conducts an assessment, and recommends to the state attorney and the court the most appropriate sanctions and services.<sup>15</sup> The JPO serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.<sup>16</sup>

### Effect of the Bill

The bill amends s. 985.14, F.S., to allow both DJJ and JAC personnel to perform the intake process, which will provide a more efficient intake process in counties that operate their own JACs. The bill also:

- Clarifies that the intake assessment process consists of a preliminary screening that may be followed by a full mental health, cognitive impairment, substance abuse, and/or psychosexual evaluation; and
- Requires youth to be screened to determine career or technical education problems (rather than vocational problems).

The bill replaces the term “juvenile probation officer” with “department” throughout s. 985.145, F.S., which will allow DJJ to use employees other than JPOs to serve as a child’s primary case manager.

### **Detention Care System (Sections 14 through 21)**

Detention is the temporary custody status of children who are held pursuant to a court order or following arrest.<sup>17</sup> Currently, children may be detained in one of three types of detention care: secure,<sup>18</sup> nonsecure,<sup>19</sup> and home detention,<sup>20</sup> but only when specific statutory criteria are met. Section 985.24, F.S., provides broad findings upon which all determinations and court orders regarding detention care shall be based, including 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;
- 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.

Upon a child being taken into custody by a law enforcement agency, the JPO must accept custody of the child and review the facts in the arrest report to determine what, if any, detention care is necessary.<sup>21</sup> The JPO makes an initial decision regarding detention care placement using the “Detention Risk Assessment Instrument” (DRAI).<sup>22</sup> In certain instance, the JPO does not have

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<sup>12</sup> A referral is similar to an arrest in the adult criminal justice system.

<sup>13</sup> Section 985.135(4), F.S.

<sup>14</sup> Section 985.14(2), F.S.

<sup>15</sup> Section 985.14(1) and (2), F.S.

<sup>16</sup> Section 985.145(1), F.S.

<sup>17</sup> Section 985.03(18), F.S.

<sup>18</sup> 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.

<sup>19</sup> 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, DJJ reports that its current practice for detention is to only utilize secure detention, home detention, or home detention with electronic monitoring. E-mail from Jon Menendez, DJJ Legislative Affairs Director, dated December 10, 2013 (on file with the Criminal Justice Subcommittee).

<sup>20</sup> 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 the department staff pending adjudication, disposition, or placement.

<sup>21</sup> Section 985.25, F.S.

<sup>22</sup> Sections 985.25(1) and 985.245, F.S. Section 985.254, F.S., outlines with whom the Detention Risk Assessment Instrument (DRAI) shall be developed, when and how it shall be updated, and what factors the DRAI should be identifying when evaluating a child to determine whether detention placement is appropriate.

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).<sup>23</sup>

A child may not be held in secure, nonsecure, or home detention for more than 24 hours without a detention hearing.<sup>24</sup> A detention hearing is conducted by a circuit judge who reviews the DRAI to determine whether there is probable cause to believe the child committed the offense and whether there is a need for continued detention.<sup>25</sup> If so, the court's detention order must include specific instructions that direct the release of the child from detention no later than 5 p.m. on the last day of the detention period (generally, there is a 21-day limit to secure, nonsecure, or home detention<sup>26</sup>).<sup>27</sup>

On occasion, a juvenile may be released from secure detention or transferred to nonsecure detention. In such instances, detention staff must notify the appropriate law enforcement agency and school personnel, but only if the child is a juvenile sexual offender.

### Effect of the Bill

The bill makes numerous substantive changes to the statutes which govern the detention care system. First, the bill amends the definition of "detention care" found in s. 985.03, F.S., 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 DJJ 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, and nonsecure shelters. Nonsecure detention may include other requirements imposed by the court.

The bill authorizes DJJ to develop evening reporting centers (centers), within existing resources, 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 colocated with a JAC. 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 term "juvenile probation officer" is replaced by the term "department" throughout many of the detention-related statutes, which will allow DJJ to use employees other than JPOs to make initial detention placement decisions. The bill specifies that 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.

If a court orders detention but does not include the release date in the order, DJJ must request the court to set one on the same date the child is placed into detention care.

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.

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<sup>23</sup> Section 985.25(1)(b), F.S.

<sup>24</sup> Section 985.26(1), F.S. The child has the right to be represented at this hearing or can waive such right. Section 985.033, F.S.

<sup>25</sup> Section 985.255(3), F.S.

<sup>26</sup> 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.

<sup>27</sup> Section 985.255(3)(c), F.S.

In some respects, this expands the notification requirement by not limiting it to juvenile sex offenders. In other respects, this limits the notification requirement, because it only requires notification for sexual battery, and not all of the previously-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,<sup>28</sup> the bill requires physical observation and documented checks of the child every 10 minutes, rather than every 15 minutes.

The court must place all children who are adjudicated and awaiting placement in a commitment program in detention care. 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 has been accomplished.

### **Disposition (Sections 22 through 27)**

A child who is alleged to have committed a violation of law is formally charged by the filing of a petition for delinquency by the state attorney.<sup>29</sup> Because a child may be subject to deprivation of liberty if adjudicated delinquent, federal constitutional law requires that such child be afforded many of the same due process safeguards afforded to adult criminal defendants.<sup>30</sup> The case then proceeds to an adjudicatory hearing (trial)<sup>31</sup> as quickly as practicable. If the court finds that the child committed the violation of law, it may either withhold adjudication of delinquency or adjudicate the child delinquent.<sup>32</sup>

If a child is found to have committed an offense, either through an adjudicatory hearing or by entering into a plea, the court must hold a disposition hearing to determine the most appropriate penalty for that child. Before making a final disposition, the court must review a pre-disposition report (PDR),<sup>33</sup> which is prepared by DJJ.<sup>34</sup> The court must then determine whether it is appropriate for the child to be adjudicated and whether commitment to DJJ or probation and community-based sanctions are more appropriate.<sup>35</sup> Specific procedures are provided that must be adhered to during the disposition of the case to ensure the court makes the most appropriate disposition choice.<sup>36</sup>

### **Predisposition Reports**

As noted above, the first determination to be made by the court at disposition is a determination of the suitability or unsuitability for adjudication and commitment of the child. This determination must include consideration of DJJ's recommendations, which may include a PDR. Currently, the PDR must identify appropriate educational and vocational goals, which include successful completion of vocational courses, and successful attendance and completion of the child's current grade.

### ***Effect of the Bill***

The bill requires the PDR to identify appropriate educational and career (rather than vocational) goals, which include:

- Successful completion of career and technical education courses (rather than vocational courses); and

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<sup>28</sup> Section 985.265, F.S., sets forth instances in which a child may be detained in a jail or other facility used to detain adults.

<sup>29</sup> Section 985.318, F.S.

<sup>30</sup> Section 985.35, 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 illegally seized or obtained presented to the court in the case against them. Additionally, the facts must be established beyond a reasonable doubt and the rules of evidence apply to the proceedings. Additionally, s. 985.033, F.S., provides that a child is entitled to legal counsel at all stages of any delinquency court proceeding.

<sup>31</sup> Section 985.03(2), F.S., states an "adjudicatory hearing" is equivalent to a trial in adult criminal court and is a hearing for the court to determine whether or not the facts support the allegations stated in the petition, as provided for under s. 985.35, F.S. One difference with adjudicatory hearings is that a judge decides both the questions of fact and law. Section 985.35(2), F.S.

<sup>32</sup> Section 985.35, F.S. An adjudication of delinquency by a court is not considered a conviction.

<sup>33</sup> Section 985.433(6), F.S., provides that the pre-disposition report includes 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 the disposition of the case.

<sup>34</sup> Section 985.43, F.S.

<sup>35</sup> Section 985.433(6), F.S.

<sup>36</sup> Section 985.433, F.S.



- Successful completion of the child's current grade or recovery of credits or classes the child previously failed.

#### Probation or Postcommitment Probation (Probation)

The court that has jurisdiction over an adjudicated delinquent child may place the child in a probation program or a postcommitment probation program.<sup>37</sup> A child's probation program must include both a penalty component and a rehabilitative component.<sup>38</sup> Each child is assigned a JPO who monitors the child's compliance and helps the child connect with service providers.

If the child does not comply with the terms of probation, the child may be brought before the court on a violation of probation. There are two types of violations of probation - substantive violations (a new criminal offense) and technical violations (failure to comply with the conditions of probation).<sup>39</sup> If a child admits to the violation or is found by the court to have violated his or her probation, the court must enter an order revoking, modifying, or continuing probation.<sup>40</sup> Specifically, the court may:

- Place the child into a consequence unit<sup>41</sup> 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 DJJ.<sup>42</sup>

#### *Effect of the Bill*

The bill amends s. 985.435, F.S., to add a new component that may be included as a part of the probation program. This component, called an alternative consequence component, is solely for instances when a child commits a technical violation of probation (not a substantive violation), and is intended to provide swift and appropriate consequences for any future technical violations. If the probation program includes the alternative consequence component, the judge must state in the disposition order the consequences that will apply to specific violations.

The bill amends s. 985.439, F.S., to authorize the court to place the child who has admitted, or been found to have committed, a violation of probation that is technical in nature in an alternative consequence program. If this occurs, the judge must approve specific consequences for specific future violations of the conditions of probation. Alternative consequence programs:

- Must to 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, DJJ, a juvenile assessment center, or another entity selected by DJJ.

#### Commitment

The court that has jurisdiction over an adjudicated delinquent child may commit the child to a nonresidential or residential facility.<sup>43</sup> Commitment programs vary by "restrictiveness level," which is defined in s. 985.03(46), F.S., to mean "the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children." There are currently five restrictiveness levels of commitment, including:

- Minimum-risk nonresidential, also known as a level 2 commitment program, where children remain in the community and participate in at least 5 days per week in a day treatment program;
- Low-risk residential, also known as a level 4 program, where children are in a residential program and are allowed to have unsupervised access to the community;

<sup>37</sup> Section 985.435(1), F.S.

<sup>38</sup> Section 985.435(2) and (3), F.S., give examples of what these components include.

<sup>39</sup> See *Meeks v. State*, 754 So.2d 101, 103 (Fla.1st DCA 2000); *Johnson v. State*, 678 So.2d 934, 934 (Fla. 3d DCA 1996).

<sup>40</sup> Section 985.439(4), F.S.

<sup>41</sup> 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.

<sup>42</sup> Section 985.439(4), F.S.

<sup>43</sup> Section 985.441, F.S.

- Moderate-risk residential, also known as a level 6 program, where children are in a residential program and are allowed to have supervised access to the community;
- High-risk residential, also known as a level 8 program, where children are not allowed access to the community; and
- Maximum-risk residential, also known as a level 10 program, which are long-term residential programs, including juvenile correctional facilities or juvenile prisons that do not allow the children to have any access to the community.<sup>44</sup>

Each residential restrictiveness level cannot have more than 165 beds.<sup>45</sup>

If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing.<sup>46</sup> DJJ must then recommend the restrictiveness level most appropriate for the child. The court must commit the child at the restrictiveness level identified, but may commit at a different restrictiveness level by stating for the record the reasons that establish by a preponderance of the evidence why the court is disregarding the restrictiveness level recommended by DJJ.<sup>47</sup>

Once a commitment order is entered, DJJ is responsible for determining placement in a specific residential program based on the child's identified risks and needs.<sup>48</sup> Currently, the court must order a child to be placed in a specific restrictiveness level from level 2 through level 10 and 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.<sup>49</sup> The goals of the plan are based on the child's rehabilitative needs and must include educational and vocational service goals.<sup>50</sup> In addition, all residential programs provide medical, mental health, substance abuse, and developmental disability services.<sup>51</sup>

#### *Effect of the Bill*

The bill replaces the term "juvenile probation officer" with the term "department" throughout many of the commitment-related statutes, which will allow DJJ to use employees other than JPOs to perform commitment-related duties.

The bill amends the definition of "restrictiveness level" in s. 985.03(46), F.S., to combine low-risk residential (level 4) and moderate-risk residential (level 6) into one group called "nonsecure residential." This will allow DJJ to place a child whose risk is currently low into a program that caters to children with slightly higher risk levels to ensure that other needs or services the child requires may be fulfilled. The bill also limits residential restrictiveness levels to 90 beds (rather than 165).

The bill amends s. 985.441, F.S., to allow certain youth<sup>52</sup> to be committed to nonsecure residential placement 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 previous 18 months*.

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

<sup>44</sup> Section 985.03(46), F.S.

<sup>45</sup> Section 985.03(46), F.S.

<sup>46</sup> Section 985.441(7), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> *Residential Services*, Comprehensive Accountability Report, Fiscal Year 2011-2012, <http://www.djj.state.fl.us/research/reports/car> (last visited February 13, 2014).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> This includes youth whose offense is a misdemeanor as well as youth who are on probation for a misdemeanor who commit a technical violation. Section 985.441(2), F.S.

- Escapes from a residential commitment program or from being carried thereto or therefrom; or
- Absconds from a nonresidential commitment facility.

The bill further requires that DJJ make every reasonable effort to locate the child within their existing resources.

#### 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. Its purpose is to protect the public, reduce recidivism, increase responsible productive behavior, and provide for a successful transition of the youth from the department to the family.<sup>53</sup>

DJJ must assess each child placed into a residential commitment facility to determine the need for conditional release services upon release from the facility.<sup>54</sup> Children participating in conditional release services must participate in an educational program<sup>55</sup> if they are of compulsory school attendance age or noncompulsory school age and have not obtained a high school diploma or its equivalent.<sup>56</sup> A child who has received their diploma or equivalent, but is not employed, must attend college classes, other career education, or participate in workforce development.<sup>57</sup>

DJJ must also provide to older<sup>58</sup> children with opportunities to participate in “transition-to-adulthood” services that assist with building life skills and increase the ability to live independently and be self-sufficient.<sup>59</sup> DJJ is authorized to engage in a variety of activities designed to support participation in transition-to-adulthood services.<sup>60</sup>

#### *Effect of the Bill*

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

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

The bill also expands the activities DJJ is authorizes to engage in to support participation in transition-to-adulthood services. Specifically, DJJ may:

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

#### **Contempt of Court (Section 5)**

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 any provision of ch. 985, F.S., or order of the court. There are

<sup>53</sup> Section 985.03(12), F.S.

<sup>54</sup> Section 985.46(3), F.S.

<sup>55</sup> Pursuant to s. 1003.21(1) and (2)(a), F.S.

<sup>56</sup> Section 985.46(5), F.S.

<sup>57</sup> *Id.*

<sup>58</sup> “Older” in s. 985.461, F.S., refers to children 17 years of age or older.

<sup>59</sup> Section 985.461(1), F.S.

<sup>60</sup> Section 985.461(4)(a)-(h), F.S.

two types of contempt of court - direct and indirect. Direct contempt results from conduct committed in the presence of the judge, while indirect contempt concerns conduct outside the judge's presence.<sup>61</sup>

A child charged with direct contempt may be sanctioned immediately.<sup>62</sup> 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.<sup>63</sup> In indirect contempt proceedings, the child is given specified due process rights.<sup>64</sup>

If a court finds that a child committed contempt of court, the court may either take the child into custody for the child to serve an alternative sanction<sup>65</sup> or order the child be placed into a secure facility<sup>66</sup> for a specified time.<sup>67</sup> If a child is placed into a secure facility for contempt, the placement must be reviewed by the court every 72 hours to determine whether it is appropriate for the child to remain there.<sup>68</sup>

#### Effect of the Bill

The bill requires the court to hold a hearing to determine if a child has committed direct contempt of court and affords the child specified due process rights at this hearing. The bill also clarifies that if a judge places a child into a secure facility for contempt, such facility must be a *detention* facility. In such instances, the court need only review the appropriateness of the placement upon motion by the defense attorney or state attorney (rather than every 72 hours).

### **Fingerprinting and Photographing (Section 10)**

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

#### Effect of the Bill

The bill excludes a child from the fingerprint requirements if the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, F.S.

### **Internal Agency Procedures (Sections 31, 33, 34, 36, 37, 38 39 and 40)**

#### Administering the Juvenile Justice Continuum

Section 985.601, F.S., requires DJJ to develop or contract for diversified and innovative programs to provide rehabilitative treatment, and provides examples of such treatment.

#### Effect of the Bill

The bill adds the terms "trauma-informed care," family engagement resources and programs," and "gender-specific programming" to the examples of rehabilitative treatment. The bill also authorizes DJJ to pay expenses, within existing resources, in support of innovative programs and activities that address identified needs and the well-being of children in DJJ's care or under its supervision.

#### Quality Assurance and Cost-Effectiveness

Section 985.632, F.S., requires DJJ to provide transparency to policy makers and the public about the costs and effectiveness of the programs that it operates. DJJ is also required to develop an accountability system which assists in ensuring that the children it serves are receiving the best services for his or her needs.

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<sup>61</sup> *Kelley v. Rice*, 800 So.2d 247 (Fla. 2nd DCA 2001); *E.T. v. State*, 587 So.2d 615 (Fla. 1st DCA 1991).

<sup>62</sup> Section 985.037(4)(a), F.S.

<sup>63</sup> Section 985.037(4)(b), F.S.

<sup>64</sup> *Id.*

<sup>65</sup> Section 985.037(3), F.S. Each judicial circuit is required to have an alternative sanctions coordinator who shall 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.

<sup>66</sup> A child may only be placed into a secure facility if alternative sanctions are unavailable or inappropriate Section 985.037(1), F.S.

<sup>67</sup> Five days for a first offense and 15 days for a second or subsequent offense of contempt. Section 985.037(2), F.S.

<sup>68</sup> Section 985.037(4), F.S.

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.<sup>69</sup> 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.<sup>70</sup> 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.

Section 985.632, F.S., defines “client”<sup>71</sup> and “program effectiveness.”<sup>72</sup>

#### *Effect of the Bill*

The bill:

- Revises legislative intent language to accurately reflect the measures DJJ uses to quantify program outcomes;
- Requires the annual report to collect and analyze available statistical data for the purpose of ongoing evaluation of all programs;
- Deletes the terms “client” and “program effectiveness” and adds the following definitions:
  - “Program,” means any facility or service for youth that is operated by DJJ or by a provider under contract with DJJ; and
  - “Program group,” means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison amongst programs within the group;
- Codifies the Comprehensive Accountability Report (CAR),<sup>73</sup> and requires DJJ to work with the Office of Economic and Demographic Research to develop a standard methodology for measuring and reporting program outputs and youth outcomes;
- Requires the standard methodology used in the CAR to include certain terminology for measuring performance, specify program outputs, and specify desired child outcomes and methods to measure child outcomes; and
- Revises components of the cost-effectiveness model by requiring:
  - The cost-effectiveness model to compare costs to expected and actual child recidivism rates, rather than client outcomes and program outputs; and
  - DJJ to rank commitment programs based on performance measures and adherence to quality improvement standards, in addition to the cost-effectiveness model.

The bill removes the terms “quality assurance” and “minimum threshold” and replaces them with the terms “quality improvement” and “minimum standard” throughout s. 985.632, F.S.

#### Departmental Contracting Powers; Personnel Standards and Screening

Section 985.644, F.S., requires DJJ employees and all personnel<sup>74</sup> of contract providers to complete a:

- Level 2 employment screening prior to employment (which requires fingerprinting);<sup>75</sup> and
- National criminal records check by the Federal Bureau of Investigation every 5 years following the date of the person’s employment.

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<sup>69</sup> Section 985.632(3), F.S.

<sup>70</sup> *Id.*

<sup>71</sup> “Client” is defined to mean any person who is being provided treatment or services by DJJ or by a provider under contract with DJJ. Section 985.632(2)(a), F.S.

<sup>72</sup> “Program effectiveness” means the ability of the program to achieve desired client outcomes, goals, and objectives.

<sup>73</sup> The CAR, in its current form, has been published by DJJ since 2006. It includes all of the information required to be reported under s. 985.632, F.S., as well as additional information. *Comprehensive Accountability Reports*, <http://www.djj.state.fl.us/research/reports/car> (last visited on February 13, 2014).

<sup>74</sup> 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.

<sup>75</sup> 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, and may include local criminal records checks through local law enforcement agencies.

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

#### *Effect of the Bill*

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

#### Juvenile Justice Training Academies

DJJ is required to establish and oversee juvenile justice training academies to ensure that all parties involved with children in the juvenile justice system are able to meet the needs of such children while meeting specified accreditation requirements.<sup>76</sup> 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.<sup>77</sup>

Section 985.66(3), F.S., requires DJJ to provide specified components to the training programs for the juvenile justice program staff based upon a job-task analysis.<sup>78</sup> All department program staff and providers who deliver direct care services pursuant to contract with DJJ are required to participate in and successfully complete the approved training program relevant to their areas of employment.<sup>79</sup> Judges, state attorneys, public defenders, law enforcement officers, and school district personnel *may* participate in such a training program.

#### *Effect of the Bill*

The bill amends s. 985.66, F.S., to:

- Remove references to “academies” when referring to juvenile justice training programs;
- Revise legislative intent language to specify that the purpose of establishing staff development and training programs is to “provide employees of the department, any private or public entity, or contract providers who provide services or care for youth under the responsibility of the department with the knowledge and skills needed to appropriately interact with children and provide such care and services;”
- Requires DJJ to designate the *number* of (not just the location of) training programs and courses; and
- Authorize all employees of contract providers who provide services or care for youth under the responsibility of DJJ to participate in the certifiable training program.

#### 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 the advisory boards is to advise DJJ in the development and implementation of juvenile justice programs and policies related to at-risk youth.<sup>80</sup> The duties of the advisory boards are enumerated in s. 985.664(2), F.S.

Section 985.664, F.S., requires the advisory board’s initial chair to be selected by October 1, 2013, and establishes a timeframe in which the initial chair must appoint other board members. This language is now obsolete.

#### *Effect of the Bill*

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<sup>76</sup> Section 985.66(1), F.S.

<sup>77</sup> Section 985.66(1), (2), and (3), F.S.

<sup>78</sup> These components include to design, implement, maintain, evaluate and revise a basic training program for: a. the purpose of providing specified minimum employment training qualifications for all juvenile justice personnel, including a competency-based examination; b. an advanced training program that is intended to enhance knowledge, skills, and abilities related to job performance with competency-based examinations for each training course; c. a career development training program intended to prepare personnel for promotion with competency-based examinations for each training course; and d. juvenile justice training courses, or to enter into contracts for such training courses, that are intended to provide for the safety and well-being of both citizens and juvenile offenders.

Section 985.66(3), F.S.

<sup>79</sup> Section 985.66(3), F.S.

<sup>80</sup> Section 985.664(1), F.S.

The bill removes the obsolete language and specifies that the chair of a board serves at the pleasure of DJJ's Secretary.

#### Direct-Support Organizations

Section 985.672, F.S., defines a direct support organization (DSO) 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; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with DJJ's adopted goals and mission.

DJJ may permit, without charge, appropriate use of fixed property and facilities of the juvenile justice system by a DSO.<sup>81</sup> Unlike other agencies with DSOs, DJJ is not permitted to allow DSOs to use personnel services.<sup>82</sup>

#### *Effect of the Bill*

The bill gives DJJ the authority to permit a DSO to use personnel services. Personnel services include full-time or part-time personnel, as well as payroll processing services.

#### Siting of Facilities

Section 985.682, F.S., establishes procedures that must be followed when proposing a site for a juvenile justice facility. Currently, DJJ is required to conduct a detailed statewide comprehensive study (Study) to determine current and future needs for all facility types for children committed to DJJ.<sup>83</sup> The Study must assess, rank, and designate appropriate sites based upon these needs.<sup>84</sup>

#### *Effect of the Bill*

The bill amends s. 985.682, F.S., to delete the requirement that DJJ conduct the Study.

#### One-Time Startup Funding for Juvenile Justice Purposes

Section 985.69, F.S., authorizes funds from juvenile justice appropriations to be utilized as one-time startup funding for juvenile justice purposes that include, but are not limited to, 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. DJJ is currently funded for repair and maintenance of facilities through the General Appropriations Act.

#### *Effect of the Bill*

The bill changes the term "one-time startup" to "repair and maintenance" throughout the s. 985.69, F.S. This allows these funds to be used for the continuing repair and maintenance of DJJ facilities.

### **Payment of Medical Expenses for Detained Youth (Section 35)**

#### 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).<sup>85</sup>

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<sup>81</sup> Section 985.672(4), F.S.

<sup>82</sup> These agencies include the Guardian ad Litem, Department of Veteran's Affairs, Department of Elderly Affairs, and the Department of Agriculture and Consumer Services.

<sup>83</sup> Section 985.682(1), F.S.

<sup>84</sup> Section 985.682(2), F.S.

<sup>85</sup> 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 13, 2014).



Medicare reimburses providers based on the type of service they provide. The Centers for Medicare and Medicaid Services (CMS) develops annual fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.<sup>86</sup> Other Medicare providers are paid via a prospective payment system (PPS). The PPS 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). CMS uses separate PPS's for reimbursement to acute inpatient hospitals, home health agencies, hospices, hospital outpatient departments, inpatient psychiatric facilities, inpatient rehabilitation facilities, long-term care hospitals, and skilled nursing facilities.<sup>87</sup>

#### The Department of Corrections and Medical Payment Caps

In 2008, the General Appropriations Implementing Bill<sup>88</sup> capped medical payment rates that the Department of Corrections (DOC) could pay to a hospital or a health care provider (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 when no contract existed between 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 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.<sup>89</sup>

Similarly, the 2013 General Appropriations Implementing Bill capped medical payment rates that DJJ could pay to a hospital or provider providing any health care services.<sup>90</sup>

#### *Effect of the Bill*

The bill codifies the language contained in the implementing bill for the 2013-2014 General Appropriations Act. Specifically, the bill provides that if there is no contract between 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. DJJ may continue to make payments for services to a provider at the contracted rates for contracts executed before July 1, 2014, through the term of an executed contract.<sup>91</sup> 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% 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, DJJ may pay up to 125 percent of the Medicare allowable rate.

The bill defines the term "hospital" to mean a hospital licensed under ch. 395, F.S., and a "health care provider" to have the same meaning as provided in s. 766.105, F.S.

### **Offenses Committed Against Youth under the Jurisdiction of DJJ (Sections 42 and 43)**

#### Sexual Misconduct by an Employee

Section 985.701, F.S., makes it a second degree felony<sup>92</sup> for a DJJ employee<sup>93</sup> to engage in sexual misconduct<sup>94</sup> with juvenile offenders "detained or supervised by, or committed to the custody, of the department." The statute does not define the term "juvenile offender."

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<sup>86</sup> *Fee Schedules – General Information*, <http://www.cms.gov/FeeScheduleGenInfo/> (last visited on February 13, 2014).

<sup>87</sup> *Prospective Payment System – General Information*, <http://www.cms.gov/ProspMedicareFeeSvcPmtGen/> (last visited on February 13, 2014).

<sup>88</sup> Chapter 2008-153, L.O.F.

<sup>89</sup> Created by ch. 2009-63, L.O.F.

<sup>90</sup> Chapter 2013-41, L.O.F.

<sup>91</sup> The bill allows for contracts to be renewed during the 2013-2014 fiscal year.

<sup>92</sup> 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.

<sup>93</sup> 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.



### Neglect of Youth Committed to the Department of Juvenile Justice

Section 985.02, F.S., outlines the legislative intent for the juvenile justice system and provides that the children of the state shall be provided with protection from abuse, neglect and exploitation; as well as adequate nutrition, shelter and clothing. While uncommon, there have been instances in which a DJJ employee neglects a juvenile offender in DJJ's custody resulting in harm to the juvenile offender.<sup>95</sup>

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances where a DJJ employee is alleged to have neglected a youth in DJJ's custody. As a result, prosecutors have looked to statutes outside of ch. 985, F.S., to prosecute such employees. One statute prosecutors have attempted to use for such prosecutions 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 DJJ's custody who are 18 or older.<sup>96</sup>

### *Effect of the Bill*

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

The bill creates s. 985.702, F.S., establishing a new criminal offense, effective October 1, 2014, relating to willful and malicious neglect of a juvenile offender. The bill makes it a third degree felony<sup>97</sup> 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.

The bill defines an "employee" as a paid staff member, volunteer, or intern who works in a DJJ program or a program operated by a provider under contract with DJJ; and defines a "juvenile offender" 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., such determination constitutes sufficient cause under s. 110.227, F.S.,<sup>98</sup> for dismissal from employment with DJJ, and prohibits the employee from being employed in any capacity in connection with the juvenile justice system.

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<sup>94</sup> 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 DJJ or an employee of a provider under contract with DJJ.

<sup>95</sup> *DJJ supervisor thought Eric Perez was "faking" as he dies in juvie lockup, officer testifies*, [http://blogs.browardpalmbeach.com/pulp/2012/03/djj\\_eric\\_perez\\_death\\_grand\\_jury\\_report.php](http://blogs.browardpalmbeach.com/pulp/2012/03/djj_eric_perez_death_grand_jury_report.php) (last visited on February 13, 2014); *Parents of teen who died at Palm Beach County juvenile center say they'll sue DJJ*, <http://www.palmbeachpost.com/news/news/crime-law/parents-of-teen-who-died-at-palm-beach-county-ju-1/nLhcN/> (last visited on February 13, 2014).

<sup>96</sup> Chapter 827, 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, there are instances which DJJ has custody of a person who is 18 years old or older. For example, s. 985.0301(5)(a), F.S., states DJJ must retain jurisdiction over a child alleged to have committed a delinquent act until the child reaches 19 years old and may retain jurisdiction for an additional 365 days following the child's 19<sup>th</sup> birthday if the child is participating in transition-to-adulthood services.

<sup>97</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>98</sup> Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

The bill requires employees who witness the neglect of a juvenile offender to immediately report the incident to DJJ's incident hotline. The witness must also prepare an independent report specifically describing the nature of the incident, the location and time, and the persons involved. This 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 there is probable cause to believe that a violation occurred, notify the state attorney in the circuit in which the incident occurred.

Any person who is required to prepare a report under this section who knowingly or willfully fails to file a report, or prevents another person from filing a report commits a first degree misdemeanor. 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.

The bill provides the effective date of this section is October 1, 2014.

### **Repealers (Sections 9, 32, 41, and 46)**

#### Youth Custody Officers

Section 985.105, F.S., creates a position called "youth custody officer" (YCO) within DJJ. YCOs are responsible for taking a youth into custody if the officer has probable cause to believe that the youth has:

- Violated the conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after being properly noticed.<sup>99</sup>

YCOs must meet the minimum qualifications for employment or appointment, be certified under ch. 943, F.S., and comply with the requirements for continued employment required by s. 943.135, F.S.<sup>100</sup> Additionally, s. 121.0515, F.S., designates YCOs as "special risk class" members for purposes of the Florida Retirement System.

DJJ reports that it eliminated YCO positions in July 2010, due to budget cuts.<sup>101</sup> The duties of YCOs were either distributed among existing employees or were no longer performed by DJJ.<sup>102</sup>

#### *Effect of Bill*

The bill repeals s. 985.105, F.S., to eliminate the YCO position, and amends s. 121.0515, F.S., to remove references to YCOs as a position that is designated as a special risk class member.

#### Prevention Services Programs and Providers

Section 985.605, F.S., requires DJJ to monitor all state-funded programs, grants, appropriations, or activities designed to prevent juvenile delinquency or a child from becoming eligible under the CINS program to inform the Governor and Legislature.<sup>103</sup> DJJ is authorized to expend funds to prevent juvenile delinquency as long as DJJ maximizes public accountability and documents outcomes. Each entity that receives money from the state must design their programs to provide one of four specified strategies<sup>104</sup> and submit demographic information of all their participants to DJJ for verification.<sup>105</sup> DJJ is required to develop a system to measure the effectiveness of programs that accept state funds.

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<sup>99</sup> Section 985.105(3), F.S.

<sup>100</sup> Section 985.105(2), F.S.

<sup>101</sup> Department of Juvenile Justice, 2013 Agency Proposal for HB 4019 (on file with Criminal Justice Subcommittee staff).

<sup>102</sup> *Id.*

<sup>103</sup> Section 985.605(1), F.S.

<sup>104</sup> Section 985.605(2)(a), F.S.

<sup>105</sup> Section 985.605(2)(c), F.S.

Section 985.606, F.S., requires each state agency or entity that receives or uses state appropriations to fund programs, grants, appropriations, or activities that are designed to prevent juvenile delinquency and related issues to collect data relative to the performance of such activities and provide said data to the Governor and both houses of the Legislature no later than January 31st of each year for the preceding fiscal year.

*Effect of the Bill*

The bill repeals ss. 985.605 and 985.606, F.S. However, the policies found therein relating to design strategies for prevention programs, public accountability of such programs, documentation of program outcomes, the sharing of personal demographic information of program participants, and data collection for performance outcomes of the prevention services are moved to s. 985.17, F.S.

Early Delinquency Intervention Programs

Section 985.61, F.S., authorizes the establishment of an Early Delinquency Intervention Program (EDIP) and provides specified components that must be included in such program. The EDIP must be developed by DJJ in cooperation with specified local entities (e.g., law enforcement, judiciary, etc.) and must consist of intensive residential treatment in a secure facility for 7 days to 6 weeks (followed by additional services for 6-9 months).<sup>106</sup> The court has the authority to make the EDIP a part of a child's dispositional placement.<sup>107</sup>

DJJ reports the funding for the EDIP was eliminated from their budget in Fiscal Year 2006-07.<sup>108</sup>

*Effect of the Bill*

The bill repeals s. 985.61, F.S.

Juvenile Maintenance Trust Fund

Section 985.694, F.S., creates the Juvenile Care and Maintenance Trust Fund, which must be credited with any money or other property received for personal use or the benefit of juveniles in the custody of DJJ. DJJ acts as a fiduciary of the money in the fund on behalf of juveniles who are committed to or detained in DJJ facilities or facilities operated by private vendors contracting with DJJ. DJJ reports that the trust fund is no longer utilized and has no funding stream. DJJ further reports that facilities have local welfare trust funds which serve the same purpose.<sup>109</sup>

*Effect of the Bill*

The bill repeals s. 985.694, F.S.

Tours of state correctional facilities

Section 945.75, F.S., requires 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 DOC. The statute requires counties to develop similar programs involving county jails. These tour programs are commonly referred to as "scared straight programs."<sup>110</sup> 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.<sup>111</sup>

DJJ reports that because they comply with the Federal Juvenile Justice and Delinquency Prevention Act of 2002. They receive between two million and eight million dollars in federal funding.<sup>112</sup> DJJ

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<sup>106</sup> Section 985.61, F.S.

<sup>107</sup> *Id.*

<sup>108</sup> Electronic mail from Jon Menendez dated December 12, 2013 (on file with the Criminal Justice Subcommittee).

<sup>109</sup> Electronic mail from Jon Menendez dated December 12, 2013 (on file with the Criminal Justice Subcommittee).

<sup>110</sup> *Scared Straight Programs*, [www.dcjs.virginia.gov/juvenile/compliance](http://www.dcjs.virginia.gov/juvenile/compliance) (last visited on February 13, 2014); *See also Scared Straight Programs: Jail and Detention Tours*, DJJ, [www.djj.state.fl.us/docs/research2/scared\\_straight\\_booklet\\_version](http://www.djj.state.fl.us/docs/research2/scared_straight_booklet_version) (last visited on February 13, 2014)

<sup>111</sup> *Id.*

<sup>112</sup> Department of Juvenile Justice, 2013 Agency Proposal (on file with the Criminal Justice Subcommittee).

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.<sup>113</sup>

*Effect of the Bill*

The bill repeals s. 945.75, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.01, F.S., relating to purposes and intent.

Section 2. Amends s. 985.02, F.S., relating to legislative intent for the juvenile justice system.

Section 3. Amends s. 985.03, F.S., relating to definitions.

Section 4. Amends s. 985.0301, F.S., relating to jurisdiction.

Section 5. Amends s. 985.037, F.S., relating to punishment for contempt of court; alternative sanctions.

Section 6. Amends s. 985.039, F.S., relating to cost of supervision; cost of care.

Section 7. Amends s. 985.045, F.S., relating to court records.

Section 8. Amends s. 985.101, F.S., relating to taking a child into custody.

Section 9. Repeals s. 985.105, F.S., relating to youth custody officer.

Section 10. Amends s. 985.11, F.S., relating to fingerprinting and photographing.

Section 11. Amends s. 985.14, F.S., relating to intake and case management system.

Section 12. Amends s. 985.145, F.S., relating to responsibilities of the juvenile probation officer during intake; screenings and assessments.

Section 13. Creates s. 985.17, F.S., relating to prevention services.

Section 14. Amends s. 985.24, F.S., relating to use of detention; prohibitions.

Section 15. Amends s. 985.245, F.S., relating to risk assessment instrument.

Section 16. Amends s. 985.25, F.S., relating to detention intake.

Section 17. Amends s. 985.255, F.S., relating to detention criteria; detention hearing.

Section 18. Amends s. 985.26, F.S., relating to length of detention.

Section 19. Amends s. 985.265, F.S., relating to detention transfer and release; education; adult jails.

Section 20. Amends s. 985.27, F.S., relating to postcommitment detention while awaiting placement.

Section 21. Amends s. 985.275, F.S., relating to detention of escapee or absconder on authority of the department.

Section 22. Amends s. 985.433, F.S., relating to disposition hearings in delinquency cases.

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<sup>113</sup> *Id.*

Section 23. Amends s. 985.435, F.S., relating to probation and postcommitment probation; community service.

Section 24. Amends s. 985.439, F.S., relating to violation of probation or postcommitment probation.

Section 25. Amends s. 985.441, F.S., relating to commitment.

Section 26. Amends s. 985.46, F.S., relating to conditional release.

Section 27. Amends s. 985.461, F.S., relating to transition to adulthood.

Section 28. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 29. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.

Section 30. Amends s. 985.514, F.S., relating to responsibility for cost of care; fees.

Section 31. Amends s. 985.601, F.S., relating to administering the juvenile justice continuum.

Section 32. Repeals s. 985.605, F.S., relating to prevention service program; monitoring; uniform performance measures; s. 985.606, F.S., relating to prevention services providers; performance data collection; reporting; and s. 985.61, F.S., relating to early delinquency intervention program; criteria.

Section 33. Amends s. 985.632, F.S., relating to quality assurance and cost effectiveness.

Section 34. Amends s. 985.644, F.S., relating to departmental contracting powers; personnel standards and screening.

Section 35. Creates s. 985.6441, F.S., relating to health care services.

Section 36. Amends s. 985.66, F.S., relating to juvenile justice training academies; staff development and training; Juvenile Justice Training Trust Fund.

Section 37. Amends s. 985.664, F.S., relating to juvenile justice circuit advisory boards.

Section 38. Amends s. 985.672, F.S., relating to direct-support organization; definition; use of property; board of directors; audit.

Section 39. Amends s. 985.682, F.S., relating to siting of facilities; study; criteria.

Section 40. Amends s. 985.69, F.S., relating to one-time startup funding for juvenile justice purposes.

Section 41. Repeals s. 985.694, F.S., relating to Juvenile Care and Maintenance Trust Fund.

Section 42. Amends s. 985.701, F.S., relating to sexual misconduct prohibited; reporting required; penalties.

Section 43. Creates s. 985.702, F.S., relating to willful and malicious neglect of a juvenile offender prohibited; reporting required; penalties.

Section 44. Amends s. 985.721, F.S., relating to escapes from a secure detention or residential commitment facility.

Section 45. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 46. Repeals s. 945.75, F.S., relating to tours of state correctional facilities for juveniles.

Section 47. Amends s. 121.0515, F.S., relating to Special Risk Class.

Section 48. Amends s. 316.635, F.S., relating to courts having jurisdiction over traffic violations; powers relating to custody and detention of minors.

Section 49. Amends s. 318.143, F.S., relating to sanctions for infractions by minors.

Section 50. Provides an effective date of July 1, 2014, except as otherwise expressly provided.

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

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

#### **1. Revenues:**

By repealing s. 945.75, F.S., relating to “scared straight programs,” the bill keeps DJJ in compliance with the Juvenile Justice and Delinquency Prevention Act, and eligible for federal funding.

#### **2. Expenditures:**

See FISCAL COMMENTS section.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

The bill adds new detention criteria which could result in some children being held in secure detention that would not otherwise have been detained, or being detained for longer periods of time. To the extent this occurs, it will have a minimal negative fiscal impact on local government expenditures. See FISCAL COMMENTS section.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Families who are 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 who may currently be subject to placement in secure detention for technical violations of probation may not be required to go into secure detention because the bill creates an alternative consequence option to handle noncompliance with the technical conditions of probation. This could assist these children with maintaining any employment they currently possess.

Doctors and hospitals that currently provide services to children in the custody of DJJ without a contract may collect less money for the same services they currently provide if their fees are capped at 110 percent of the Medicare allowable rate.

### **D. FISCAL COMMENTS:**

The bill provides that the maximum bed number for all residential facilities shall be 90 beds, instead of the maximum bed number of 165 currently set in statute. DJJ currently has two residential facilities over the 90 bed limit; Riverside Academy has 165 beds and Avon Park Youth Academy has 144

beds. DJJ reports they have already issued replacement "Invitations to Negotiate" for both of these facilities.<sup>114</sup> The restructuring of these programs is being done within DJJ's existing resources.

The bill amends s. 985.25, F.S., to require any child who has been taken into custody on three or more separate occasions within a 60-day period to be placed in secure detention care until his or her detention hearing. DJJ reports that 1,730 youth met this criteria in the previous fiscal year. DJJ reports that the variable cost (clothing and food) per youth is less than \$10 per day per youth. This will be an estimated increased cost of \$30,000 a year. This number could vary depending on how many nights each youth stays at the detention center. DJJ states the majority of these youth will stay only one night and that they will absorb these increased costs within their existing resources.

The bill allows DJJ to pay expenses in support of innovative programs and activities, subject to the requirements of chapters 215, 216, and 287, F.S., that address identified needs and the well-being of children in the department's care or under its supervision. These will be new expenses the department is currently not paying. The department states these new expenses will be funded within existing resources.

The bill allows DJJ to permit the Direct Support Organization to use DJJ personnel services, which may have a fiscal impact on DJJ. However, DJJ states any new expenses will be funded within existing resources.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Section 985.64, F.S., requires DJJ to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of ch. 985, F.S. The bill does not appear to create an additional need for rulemaking or rulemaking authority.

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

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 19, 2014, the Justice Appropriations Subcommittee adopted five amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarified portions of the intent language;
- Conformed terminology used in two sections of the bill that address intake;
- Made technical changes to how the bill references acts of domestic violence;
- Provided an October 1, 2014, effective date for the new criminal offense of willful and malicious neglect of a juvenile offender; and
- Made a technical change to the section providing the effective date.

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<sup>114</sup> DJJ Follow-Up Document provided by electronic mail from Jon Menendez dated December 20, 2013 (on file with the Criminal Justice Subcommittee).

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