

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2632

SPONSOR: Criminal Justice Committee and Senator Crist

SUBJECT: Juvenile Supervision/Detention Costs

DATE: April 5, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends current law providing for the imposition and collection of fees from parents and guardians of youth supervised by the Department of Juvenile Justice (DJJ). If a youth is in a residential program, the parents or guardians will be ordered to pay \$5.00 a day for each day the youth is in the DJJ's custody (same as current law). If the youth is at home and under supervision by the DJJ through a home detention order, the parents or guardians will be ordered to pay \$1.00 per day for each day the youth remains under supervision.

The bill provides additional enforcement mechanisms for collecting these required fees. The court will be required to issue income deduction orders against parents or guardians when the court orders a parent or guardian to offset the cost of care.

This bill creates s. 985.2311 and amends ss. 985.215, 985.231, 985.233, and 322.058 of the Florida Statutes.

II. Present Situation:

The DJJ is required to charge parents or guardians' fees for the cost of care and supervision for youth in the department's care and custody under s. 985.215, 985.231, and s. 985.233, F.S. Judges must make specific findings about fee payments in commitment and/or detention orders. Current fees for detention, commitment, and supervision, as a sentencing alternative, are specified at \$5 per day.¹ The court may reduce or waive the fee if it makes a finding of indigency or inability to pay the full cost of care.² Prior to a commitment, the court may order a subsistence payment of \$2.00 per day if a youth is committed outside the home or \$1.00 per day if the youth is otherwise supervised.³

The DJJ is required to report to the court any available information concerning the parent's or guardian's ability to pay these fees. The law requires a youth's parent or guardian to provide personal identification and financial information when the youth is taken into custody, released or delivered from custody, placed in any form of detention care or in a residential commitment facility in order to determine their ability to pay. The information must include name, address, social security number, date of birth, driver's license number and sufficient financial information for the department to determine the parent's or guardian's ability to pay. Refusal to provide this information or the required financial information authorizes the court to hold the parent or guardian in contempt.⁴

The clerk of the court is the depository for collecting these fees, retaining a service charge of 3 percent of the payment, not less than \$1.00 or more than \$5.00. Payments are submitted monthly by the clerk into the Grants and Donations Trust Fund.⁵

The department has the discretion to enter into agreements with parents or guardians to establish periodic payment plans, consistent with prevailing loan rates, when payment of these fees will create hardship. The DJJ may also employ a collection agency to collect and manage the payment of unpaid and delinquent fees.⁶ According to the DJJ, the current enforcement mechanism for collecting fees is not adequate.

III. Effect of Proposed Changes:

This bill revises current law providing for the imposition and collection of fees from parents and guardians of youth supervised by the DJJ. If a youth is in a residential program, the parents or guardians will be ordered to pay \$5.00 per day for each day the youth is in the DJJ's custody (same as current law). If the youth is at home and under supervision by the DJJ (home detention), parents or guardians will be ordered to pay \$1.00 per day for each day the youth remains under supervision.

¹ s. 985.233(4)(d) 1., F.S.

² s. 985.215(6)(a), F.S.

³ s. 985.233(4)(d) 2., F.S.

⁴ s. 985.215(6)(g), F.S.

⁵ s. 985.215(6)(f), F.S.

⁶ s. 985.121(6)(h), F.S.

The clerk continues to serve as the depository for these fees, with three percent authorized for a fee of any payment made, and no less than \$1 per payment, but the cap is removed.

The court will assess these fees during the detention or disposition hearing. If the court makes a finding that the parents or guardians of the youth are indigent or that paying the fees would cause significant financial hardship, the court will reduce or waive the fee (same as current law). The court can also waive the fee if it determines that the parent or guardian is the victim of the youth's delinquent act. They will also not be required to pay if the charges are dropped or the youth is found to be not delinquent.

The bill provides additional enforcement mechanisms for collecting these required fees. The court is required to issue income deduction orders against parents or guardians when the court orders a parent or guardian to offset the cost of care. This bill prohibits a payor (employer) from refusing to employ, or taking disciplinary action against a parent or guardian because of an income deduction order, and imposes a civil penalty of \$250 for the first violation and \$500 for any subsequent violation.

The bill outlines specific procedures that must be followed while using this enforcement mechanism against parents or guardians:

- The clerk of the court is required to serve an income deduction order and notice on the payor of the parent or legal guardian, unless the parent or legal guardian has applied for a hearing to contest enforcement of the income deduction order. Service must also be made to the parent or guardian.
- The parent or guardian is authorized to apply for a hearing to contest enforcement within a specified time period.
- The payor is required to implement the income deduction order within a time specified time period, and may deduct up to \$5 against the income to reimburse the payor for administrative costs the first time, and \$2 thereafter.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill may raise a due process challenge. In *B.S. and D.L.S. v. State*, parents challenged s. 985.215(6), F.S., which required the court to impose subsistence costs on them for home detention.⁷ The Second District Court of Appeal applied the test for ordinary scrutiny, which is whether a rational relationship exists between a state statute and a permissible legislative objective.⁸ The court held that this subsistence fee violated substantive due process, in that the state incurs no expense for the juvenile's care when the juvenile is ordered into home detention, and that a parent of a juvenile on home detention expends much more than that for a juvenile detained in state custody.⁹

Although the case cited above involved a fee charged in the same amount for both home and secure detention, it is unclear whether a court would still find this unconstitutional in that DJJ is not providing subsistence in the case of home detention, and yet, under the bill, \$1 per day is charged.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

With the bill's increased collection mechanisms, more parents may be subjected to paying the required fees.

C. Government Sector Impact:

The DJJ states that the average daily population (ADP) is 23,691 for probation, 1,911 for post-commitment probation, and 2,529 for conditional release. Using the \$1 fee x 365 days x 28,131 ADP, the department anticipates possibly increasing billings by \$10,267,815, based on supervision programs. However, the DJJ has many youth who are indigent or are foster children in the agency's care for whom the fee would be waived by the courts.

In FY 2002-03, the DJJ collected \$718,456 or 6 percent of actual billing for youth in residential commitment programs and in detention care, according to its finance and accounting records. Using the same 6 percent collection rate for the supervision fee rate, the department anticipates it can collect an additional \$616,069 in cost of care fees.

VI. Technical Deficiencies:

None.

⁷ 862 So.2d 15 (Fla.2nd DCA 2003).

⁸ *Id at* 18.

⁹ *Id at* 20.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
