

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 623 w/CS Juvenile Justice

**SPONSOR(S):** Carroll

**TIED BILLS:** none

**IDEN./SIM. BILLS:** CS/SB 1946 (s)

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety &amp; Crime Prevention</u>	<u>14 Y, 0 N w/CS</u>	<u>Maynard</u>	<u>De La Paz</u>
2) <u>State Administration</u>	<u>7 Y, 0 N</u>	<u>Bond</u>	<u>Everhart</u>
3) <u>Public Safety Appropriations (Sub)</u>	<u></u>	<u></u>	<u></u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

---

### SUMMARY ANALYSIS

This bill with CS, regarding the Department of Juvenile Justice, provides that:

- A contractor of the department is authorized to purchase goods and services through the state term contracts. There are concerns with this provision, see Other Comments and Fiscal Comments.
- A guardian ad litem appointed on behalf of a child may access the child's juvenile court records.
- Individuals in the custody of the department may appear by video teleconference at certain court hearings.
- Progress reports on children in residential custody are changed from monthly to quarterly.

The department estimates that full implementation of the video teleconferencing portion of this bill will require expenditures as much as \$499,000 in FY 2004-2005, and \$374,000 annually thereafter, from General Revenue. Actual costs should be less. There are also significant cost savings that may result from this bill, although those savings are indeterminate. This bill does not appear to have a fiscal impact on local governments.

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

**STORAGE NAME:** h0623c.sa.doc

**DATE:** April 15, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill expands the government purchasing system by allowing private corporations access to the state purchasing system.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

The mission of the Department of Juvenile Justice is to “protect the public by reducing juvenile crime and delinquency”.<sup>1</sup> The department accomplishes this through prevention and victim services, detention of youth accused of a criminal offense, and the operation of correctional facilities and probation services for minors convicted of a criminal offense.<sup>2</sup>

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

##### State Term Contracts

The Department of Management Services (DMS) manages and assists “eligible users” with their purchases of goods and services. DMS maintains vendor lists, and negotiates term contracts whereby any eligible user may obtain the favorable price negotiated by DMS. Section 287.012, F.S., requires DMS to designate who is an eligible user by rule. DMS has not promulgated a rule, but current policy is that eligible users of the purchasing systems are federal government agencies, state agencies, Florida local governments, and Florida school boards. No private entities or concerns are currently allowed to purchase goods and services through DMS as an eligible user.

This bill provides that a contractor for the Department of Juvenile Justice is an eligible user who may purchase goods and services through the DMS purchasing system.

##### Juvenile Firearm Records

The Department of Juvenile Justice (DJJ) is required to complete a form regarding any minor charged with a firearm offense. One copy of the form must be forwarded to the Office of Economic and Demographic Research (EDR), in case EDR needs the information for statistical purposes. The automation of juvenile records through the Juvenile Justice Information System (JJIS) makes it unnecessary to forward the paper forms to EDR, as there is now an alternative data compilation.

This bill eliminates the requirement that a record of a juvenile firearm arrest be forwarded to EDR.

---

<sup>1</sup> Florida Department of Juvenile Justice, 2002 Annual Report, at page 2.

<sup>2</sup> *Id.* at 14.

## Juvenile Court Records

Juvenile court records are not public court records. They may, however, be inspected and copied by the parents or legal custodians of a minor, their attorneys, law enforcement, and DCF employees. They may also be inspected and copied by court order. A guardian ad litem is an individual appointed by a court to represent the child's best interest in court proceedings. The typical order appointing a guardian ad litem provides that the guardian ad litem is entitled to view all records relating to the minor; however, current law does not specifically provide that a guardian ad litem may review the juvenile court records without a separate court order to that effect.

This bill provides that a guardian ad litem appointed to represent a minor's best interest may lawfully inspect and copy that minor's juvenile court records.

## Juvenile Court Jurisdiction

The juvenile court has jurisdiction over an individual under the age of 18 who commits a criminal act, unless the act warrants that the minor be charged as an adult. The jurisdiction of the department must extend beyond the 18th birthday in order for the case to be completed and sentence carried out. Section 985.201(4), F.S., provides that, in general, the juvenile court has jurisdiction over a delinquent child through the child's 19th birthday. Jurisdiction is extended to the 22nd birthday for a delinquent child committed to a high-risk or maximum-risk conditional release program, or for an offender age 10 to 13 committed to an intensive residential treatment program. Section 985.231(1)(a)3., F.S., however, extends the department's jurisdiction over any delinquent child through the child's 21st birthday.

This bill with CS amends the department's jurisdiction in s. 985.231(1)(a)3., F.S., to end at the 19th birthday. This bill with CS also amends s. 985.201(4), F.S., to clearly provide that jurisdiction ends at the 19th birthday, unless one of the exceptions apply. This bill with CS also removes the lower age limit of 10 related to the qualifications for sentencing a delinquent child to an intensive residential treatment program.

## Juvenile Court Hearings

While the adult criminal justice system has embraced the use of video teleconferencing as a means of lowering costs while providing increased security, the juvenile court system does not utilize such technology. All juvenile court hearings are conducted in person, requiring delinquent children to be transported to a courthouse for a number of hearings. A preliminary hearing is required within 24 hours of the child being taken into custody. Youths held in secure detention may not be held for more than 21 days, except in more serious cases in which they can be held up to 30 days. A court also must hold 72 hour detention status reviews in certain cases, such as when a youth is held for an offense of domestic violence or when a youth is held for good cause past the 21 day limit. The youth must appear at the disposition hearing, at which the court disposes of the case by either dismissal or conviction and sentencing. Periodic progress hearings regarding a youth in a commitment program are required.

This bill with CS provides that a court has the discretion to allow youths to appear by video teleconference at certain hearings: 48 hour detention reviews for children held secure for domestic violence charges, detention reviews for children in detention care held within 24 hours of arrest, 72 hour reviews of detention status after a child is held beyond a 21 day period because of continuance for cause, and transfer hearings or hearings related to progress by a child in a commitment program.

## Violation of Probation

If a delinquent child violates the terms of probation, the department or the state attorney may file a petition alleging the violation. This bill with CS provides that the initial pleading to a court alleging a violation of probation is an affidavit, not a petition. Additionally, the state attorney must represent the department regarding the violation.

## Progress Reporting

The department must give a monthly progress report to the sentencing court of the progress of the delinquent child. This bill with CS changes the reporting requirement to quarterly.

### C. SECTION DIRECTORY:

Section 1 amends s. 287.042, F.S., to allow Department of Juvenile Justice providers to utilize the state purchasing system.

Section 2 amends s. 790.22, F.S., to eliminate a requirement for the Department of Juvenile Justice to furnish a redacted copy of a form to the Office of Economic and Demographic Research.

Section 3 amends s. 984.06, F.S., to provide that a guardian ad litem appointed for a minor may access the confidential juvenile court records of that minor.

Section 4 amends s. 985.201, F.S., to provide that the delinquency court may retain jurisdiction over an offender after the offender's 19th birthday under certain circumstances.

Sections 5 and 6 amend ss. 985.213, and 985.215, F.S., to allow juvenile proceedings to be conducted by video-teleconference.

Section 7 amends s. 985.231, F.S., to require that the state attorney represent the state in any delinquency court proceeding regarding a violation of probation, to change the progress reporting frequency for juveniles in custody from monthly to quarterly, and to allow hearings regarding treatment progress to be conducted by video-teleconference

Section 8 provides an effective date of July 1, 2004.

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

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Department of Juvenile Justice estimates that the cost to equip all 26 detention centers with the capability to conduct video teleconference hearings will have the following fiscal impact, payable from General Revenue:

	FY 04-05	FY 05-06	FY 06-07
Nonrecurring	\$312,000		
Recurring	<u>\$187,000</u>	<u>\$374,000</u>	<u>\$374,000</u>
Total	\$499,000	\$374,000	\$374,000

The \$312,000 figure is derived by calculating the cost of equipping the 26 detention centers at \$12,000 per center. Recurring costs are estimated at \$187,000 to operate the system at each center for six months and \$374,000 for the following years. The actual cost should be less. For instance, the detention center in Miami is attached to the courthouse, and thus would likely not require video conferencing equipment as there is no transportation issue regarding youth in custody in Miami.

This bill appears to have several provisions that would reduce expenditures. The DJJ does not have sufficient data to develop an estimate of these potential savings. See Fiscal Comments.

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

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

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

None.

**D. FISCAL COMMENTS:**

The cost to add private vendors as eligible users of the state purchasing system is unknown but potentially significant. The system was never designed for eligible users who are not tax-exempt governmental entities. The cost to engineer the system to collect and pay over sales tax owed on purchases by private entities is unknown, and it is unknown what that potential loss to the state would be if the system were not re-tooled and the state would have to rely upon self-reporting by those private entities that are acting as eligible users.

There are potential savings inherent in using video teleconferencing to reduce the number of juveniles transported from detention facilities to courthouses for routine hearings. For instance, while it is unlikely that a judge will allow video teleconferencing for final hearings, it is likely that judges would allow video teleconference hearings for the initial detention hearing. Last year, there were 55,000 detention hearings. The department's transportation budget in 2002 was \$4.1 million.<sup>3</sup> It is unknown how much that budget can be reduced should this bill be implemented.

The Department of Juvenile Justice cannot determine the potential savings that will result from changing status reporting on juveniles in residential custody from monthly to quarterly. At any one time, there are approximately 8,000 youths in residential custody. If all were being held for long periods of time, 64,000 reports would be eliminated annually. However, the nature of juvenile proceedings is that many offenders are held for short periods of time in residential detention, and at least one report is required to be given to the court before an offender may be released.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Article III, s. 6, Fla.Const., requires that "[e]very law shall embrace but one subject and matter properly connected therewith". It is unclear whether there is a sufficient nexus between the sections of this bill.

---

<sup>3</sup> From 2002 Annual Report.

Recently, the Florida Supreme Court in *In Re: Florida Rule of Juvenile Procedure 8.100(a)*, 796 So.2d 470 (Fla.2001) declined to adopt an amendment to a rule of juvenile procedure which would have given judges the option of conducting detention hearing via audio-visual devices. The proposed rule came out of a one-year pilot program in several circuits. The court received conflicting feedback from interested parties, particularly regarding the communication between public defenders and clients and families of clients. The court declined to adopt a rule which would have allowed the video juvenile detention hearings statewide, although in a footnote the court did not give up on the possibility of consideration of the matter in the future.

Under the doctrine of separation of powers in Florida's Constitution, a person belonging to one branch of government may not exercise the powers appertaining to either of the other branches unless expressly provided. Article II, Section 3, Florida Constitution. Under Article V, Section 2(a) of the Florida Constitution, the Florida Supreme Court is granted exclusive authority to promulgate rules of practice and procedure for the courts of the state. The Florida Supreme Court has held that its power extends to matters of procedure, whereas matters of substance affecting the individual rights of the parties are left to legislative prerogative. *In re Clarification of the Florida Rules of Practice and Procedure*, 281 So.2d 204 (Fla. 1973). If the court finds that use of video teleconferencing technology is procedural, the court may refuse to acknowledge the statutory change.

**B. RULE-MAKING AUTHORITY:**

None.

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

Currently, no private entity, whether they are for-profit or non-profit, is an eligible user of the state purchasing system. The Department of Management Services provided the following comments regarding the proposal in Section 1 of this bill with CS to allow contractors with DJJ access to the state purchasing system:<sup>4</sup>

DMS believes that current law adequately addresses the needs of the State and that no specific expansion to the "eligible user" definition should be adopted.

To statutorily expand the definition of "eligible user" would depart from the 2002 Legislature's directive that the Department of Management Services to establish "eligible users" through administrative rulemaking process. Currently, only governmental entities are permitted to use state term contracts negotiated by the Department of Management Services. Executive branch agencies are generally required to use such contracts; other Eligible Users (i.e., local governments, water districts, school boards) may use state term contracts at their discretion, if local controlling law also permits such use.

DMS is currently redrafting its administrative rules with regard to purchasing, including the definition of "eligible users". During rulemaking workshops, many of the entities seeking to be included as "eligible users" have been exhaustively discussed. For example, a draft definition was presented which included agency contractors, under certain circumstances such as that requested by DJJ. A number of agency purchasing professionals and several representatives from private-sector entities participated in the discussion. By the end of the workshop, a majority agreed that the additional resources needed to oversee contractors' use of state term contracts outweighed the benefits of such use.

If the Legislature is going to make contractors eligible users, all state vendors could arguably be required to sell their products to those contractors or risk being found in default of their state term contract(s). It is unclear who would be responsible for determining whether or not the contractor is making legitimate purchases. For example, the control over legitimate purchases

---

<sup>4</sup> Correspondence of April 14, 2004, on file with committee.

for office products vs. bulletproof vests. Furthermore, the existing STCs have been negotiated based on who would be eligible to purchase at the set prices. If we add the groups as mentioned above it could materially change the terms of the STCs and impact the prices offered.

The Department of Management Services has and will continue to seek alternatives to assist these worthy entities for getting a competitive price for goods and services. However, expanding this definition in a piece meal way is not a thoughtful approach.

Additionally, private vendors purchasing goods, whether in the private market or through the state purchasing system, are subject to the sales tax on such purchases. The state purchasing system is designed for government users who are exempt from the sales tax. It is unclear how the system can be re-tooled to accommodate the proper collection and payment of the sales tax.

The Department of Juvenile Justice is concerned that it may be inappropriate to change the jurisdiction of the department and the courts over juvenile offenders committed to low-risk and moderate risk programs from 21 to 19. (see line 518). Though the length of time that a delinquent youth may spend in a low or moderate risk program is relatively short, some moderate risk programs are a year in length. For example, a delinquent youth whose case was delayed for competency issues or whose offense was committed close to the youth's 18th birthday may not have adequate time to complete a moderate risk program, if committed.

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

On March 31, 2004, the Committee on Public Safety & Crime Prevention voted to pass the bill with a committee substitute. The committee substitute incorporated four amendments. One amendment removed language which expanded the arrest powers of a youth custody officer. Another amendment removed text exempting provider and contractors with the Department of Juvenile Justice from competitive bidding requirements. The amendment also added language which redefines the term "eligible user" in s. 287.012, F.S. to include contracted providers with the Department of Juvenile Justice. The final amendments would permit video teleconferencing for the following hearings: 48 hour detention reviews for children held secure for domestic violence charges, detention reviews for children in detention care held within 24 hours of arrest, 72 hour reviews of detention status after a child is held beyond a 21 day period because of continuance for cause, and transfer hearings or hearings related to progress by a child in a commitment program.

The Committee on State Administration did not adopt any amendments to this bill with CS at its meeting on April 14, 2004.