

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 3A Juvenile Detention
SPONSOR(S): Barreiro
TIED BILLS: IDEN./SIM. BILLS: SB 4A

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Justice Appropriations Committee, DeBeaugrine, DeBeaugrine.

SUMMARY ANALYSIS

Chapter 2004-263, Laws of Florida, requires that most of the costs of pre-adjudication juvenile detention be paid by the counties beginning October 1, 2004. The Florida Association of Counties and several counties challenged the law. On November 12, 2004, the Circuit Court for the Second Judicial Circuit found portions of the law unconstitutional and enjoined the state from collecting these funds from the counties. Since the counties are not providing funding, the detention center budget for FY 2004-05 will have a \$65.1 million cash shortfall. Juvenile detention centers provide secure housing for high-risk juvenile offenders that are awaiting trial or have been adjudicated and awaiting transfer to a long-term commitment program. If the centers have to shut down due to lack of funds, there are public safety implications.

This bill provides for a non-recurring appropriation of \$65.1 million from General Revenue to continue detention center operations through the rest of FY 2004-05. These funds are also to be used to restore funds transferred from other areas of the department on December 4, 2004 and to repay counties who paid prior to the law being held unconstitutional.

This bill also delays the effective date of Ch. 2004-263, Laws of Florida, to July 1, 2005. It eliminates a requirement that the Department of Juvenile Justice negotiate with other states to recover costs associated with out-of-state youth that are placed in secure detention. It eliminates provisions that require the Chief Financial Officer to withhold funds from counties that are delinquent in paying their obligation for juvenile detention.

Local governments will receive cost relief of \$65.1 million through June 30, 2005 due to the delayed implementation of the detention center payment provisions adopted in Ch. 2004-263, Laws of Florida. These costs will be paid by the state. Starting July 1, 2005 counties will be required to pay an estimated \$95.1 million annually toward the cost of detention. The current budget for detention center operations is \$112.3 million.

With the exception of the county payment provisions which take effect July 1, 2005, the bill is effective upon becoming law.

Please see Constitutional Issues: Applicability of Municipality/County Mandates Provision below.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|-------|------|--------|
| 1. Reduce government? | Yes[] | No[] | N/A[X] |
| 2. Lower taxes? | Yes[] | No[] | N/A[X] |
| 3. Expand individual freedom? | Yes[] | No[] | N/A[X] |
| 4. Increase personal responsibility? | Yes[] | No[] | N/A[X] |
| 5. Empower families? | Yes[] | No[] | N/A[X] |

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

NOTE: The Speaker of the House has adopted new House Principles to guide members in evaluating legislation during the 2002-2004 Legislature. These principles are:

Provide limited government,
Ensure lower taxes,
Safeguard individual liberty,
Promote personal responsibility,
Empower families, and
Maintain public security.

The following factors about the bill are relevant to analyzing its compatibility with the new principles:

The bill provides an appropriation to continue the operation of the detention centers for the rest of FY 2004-05 and makes provision for continued funding in the future. This will allow detention centers to continue to operate. Detention centers play a role in providing for public safety since they generally house high-risk youth.

Also, detention centers provide a sanction for criminal activity and ensure that youth charged with delinquent acts appear for their court hearing.

B. EFFECT OF PROPOSED CHANGES:

General Background

There are 26 juvenile detention centers statewide with 2,057 beds. They are somewhat analogous to jails in the adult system in that they are short-term, secure holding facilities for youth who are awaiting trial (pre-adjudication) for a delinquent act or who have been adjudicated and are waiting for transfer to a long-term commitment program. Youth placed in secure detention are generally considered to have more serious risk factors than other youth¹. The budget for juvenile detention center operations during the current year is \$112.3 million².

¹ See s. 985.213, F.S. for more detailed information on use of detention.

² Budget figure adjusted for vetoes, distribution of personnel and insurance costs, and \$3.5 million General Revenue provided for fiscally constrained counties that is counted twice due to double-budget in General Revenue and Grants and Donations Trust Fund.

The 2004 Legislature passed Ch. 2004-263, Laws of Florida, which assigned most of the costs associated with pre-adjudication detention to the counties beginning October 1, 2004. The nine month impact to the counties during state FY 2004-05 was projected to be \$65.1 million. The full twelve month impact for FY 2005-06 was estimated to be \$91.5 million³.

The Florida Association of Counties and several counties challenged the law.⁴ On November 12, 2004, the Circuit Court for the Second Judicial Circuit found portions of the law unconstitutional and enjoined the state from collecting these funds from the counties.⁵ Specifically, the court found that the law violated Article VII, Section 18 of the Florida Constitution. Article VII, Section 18, of the Florida Constitution is commonly referred to as the “mandates provision.” This section provides that counties are not bound by laws that require them to expend funds unless the law meets certain criteria that exempt the law from the section entirely or provide for an exception that would make the law binding.⁶

If a law passes both chambers of the Legislature by a two-thirds vote of the membership, the counties are bound by the law even if the law requires counties to spend funds. Chapter 2004-263, Laws of Florida, did not pass the House by a 2/3 vote. The court found that the law also did not meet any of the other applicable exceptions of Article VII, Section 18(a). Article VII, Section 18(d), provides that certain types of laws, including criminal laws, are exempt from the mandates provision. The court found that Ch. 2004-263, Laws of Florida, is not a criminal law.

The inability to collect these payments from counties has resulted in a cash shortfall in the Department of Juvenile Justice’s budget for secure detention services of \$65.1 million. The Legislative Budget Commission approved a budget amendment transferring \$16.3 million of General Revenue from other program areas of the department into the detention center budget to allow them to continue operations through January 31, 2005⁷.

Other background information relating to specific provisions of the bill are bracketed and italicized in the section that follows.

Proposed Changes

The bill contains the following provisions:

- Republishes s. 985.2155 (3) which requires counties to pay the costs of pre-adjudication detention but delays the effective date until July 1, 2005.
- Delays the effective date of 2004-263, Laws of Florida until July 1, 2005.

³ The figure for FY 2004-05 represents the net impact of \$68.6 million total county billings minus \$3.5 million of non-recurring General Revenue appropriated to cover the costs that would have otherwise been billed to fiscally constrained counties. The amount for FY 2005-06 does not include a comparable offset since the Legislature has not yet considered whether to renew these funds. Fiscally constrained counties are defined as counties within a rural area of critical economic concern pursuant to s. 288.0656, F.S., for which the value of a mill in the county is no more than \$3 million (see s. 985.2155(2)(a), F.S.).

⁴ Alachua County, Florida, et. al v. Anthony Schembri, in his capacity as Secretary of the State of Florida, Department of Juvenile Justice, et. al, (Fla. 2nd Cir. Ct.) Case No. 2004-CA-1398

⁵ The court’s order is non-final since the Department of Juvenile Justice has filed a Motion for Rehearing.

⁶ See Article VII, Section 18 of the Florida Constitution. Each subsection contains unique exceptions while subsection (d) lists bills that are exempt from the requirements of the section.

⁷ See EOG #0305 approved by the Legislative Budget Commission on December 2, 2004.

- Removes a provision requiring the state to seek payment from other states for the costs of pre-adjudication detention of youth from their state.

[The department advises that the requirement in Ch. 2004-263, Laws of Florida, for the department to seek payment from other states for costs of detention violates Federal requirements for interstate reciprocal agreements.]

- Provides that counties are not responsible for pre-adjudicatory non-medical educational or therapeutic services.

[Education services are provided through the local school board. Some centers have received direct appropriations for supplemental therapeutic services which would not be billed to counties.]

- Provides a non-recurring appropriation of \$65.1 million from General Revenue to continue detention center operations through June 30, 2005. This appropriation will also be used to restore funds transferred from other juvenile justice programs and to repay counties that paid the state prior to the injunction being ordered by the court.

- Deletes requirement that the Chief Financial Officer withhold funds from counties that do not meet their obligation.

[The counties alleged in their complaint that provisions requiring the Chief Financial Officer (CFO) to withhold revenue sharing funds did not contain sufficient guidelines for implementation and, therefore, represented an unlawful delegation of authority to the CFO⁸.]

- Provides a finding that the act is a criminal law for purposes of implementing and enforcing Article VII, Section 18 (d) of the Constitution.

[Pursuant to Article VII, Section 18 (d) of the Constitution, criminal laws are exempt from the mandates provisions contained elsewhere in that section. Article VII, Section 18(e) provides that the Legislature may enact laws to assist in the implementation and enforcement of the section.]

- Provides a finding that the act fulfills an important state interest.

- Provides that the act is effective upon becoming a law. As noted above, however, the provisions requiring the counties to pay for pre-adjudication detention become effective July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Removes provisions to bill other states for pre-adjudication detention; repeals requirement for Chief Financial Officer to withhold state funds for counties that do not pay; provides July 1, 2005 effective date for requirement that counties pay.

Section 2. Revises effective date of 2004-263, Laws of Florida to July 1, 2005.

⁸ Alachua County, Florida, et. al v. Anthony Schembri, in his capacity as Secretary of the State of Florida, Department of Juvenile Justice, et. al, (Fla. 2nd Cir. Ct.) Case No. 2004-CA-1398

Section 3. Requires Governor to reverse transfer of funds from other programs in the department to the detention center budget which was approved December 2, 2004.

Section 4. Finding that law is a criminal law as it relates to implementing and enforcing Article VII, Section 18(d) of the Constitution.

Section 5. Finding that the bill fulfills an important state interest.

Section 6. Provides an appropriation.

Section 7. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:	FY 2004-05	FY 2005-06
DJJ Grants and Donations Trust Fund	(\$65,146,936)	\$91,529,248
(please see fiscal comments)		

2. Expenditures:	FY 2004-05	FY 2005-06
General Revenue Fund	\$65,146,936	(\$91,529,248)
Grants and Donations Trust Fund	(\$65,146,936)	\$91,529,248
(please see fiscal comments)		

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:	FY 2004-05	FY 2005-06
County Funds	(\$65,146,936)	\$91,529,248
(please see fiscal comments)		

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This analysis reflects the estimated impact of the act assuming the court order remains in effect and that the state would continue to pay the costs of pre-adjudication detention in FY 2005-06, absent legislative

intervention. Specific figures are as reflected in the General Appropriations Act for FY 2004-05 and from workpapers for the anticipated effect for FY 2005-06. The figures for Fiscal Year 2004-05 are adjusted to subtract \$3.5 million that was appropriated from state funds to cover the costs that would otherwise be assigned to fiscally constrained counties. No such adjustment is assumed for FY 2005-06 since the appropriation is non-recurring.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill is anticipated to require county expenditures of approximately \$91.5 million per year starting July, 2005. Article VII, Section 18 of the Florida Constitution states as follows:

(a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature; the expenditure is required to comply with a law that applies to all persons similarly situated including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Section 5 of the bill contains a legislative determination that the law fulfills an important state interest; therefore, if the bill receives a 2/3 vote of both the House and Senate it would appear that the law would be binding on the counties regardless of whether the bill is found to be exempt from the requirements of Article VII, Section 18 as discussed below.

Subsection (d) lists several exemptions to the requirements of Article VII, Section 18 and subsection (e) authorizes the Legislature to enact laws to assist in the implementation and enforcement of Article VII, Section 18 as follows:

(d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

(e) The Legislature may enact laws to assist in the implementation and enforcement of this section.

Section 4 of the bill states: The Legislature finds that laws related to the provision and funding of sanctions and services provided to juveniles who are alleged to have committed a violation of law are an inherent and necessary component of the criminal laws of this state. Therefore, pursuant to the authority granted by Section 18(e) of Article VII of the State Constitution, this act shall be considered a criminal law for purposes of implementing and enforcing Section 18(d) of Article VII of the State Constitution.

Therefore, the bill appears to be exempt from the requirements of Article VII, Section 18 of the Constitution.⁹

The bill also eliminates language in existing law that required the Chief Financial Officer to withhold county revenue sharing funds. This provision was challenged by the counties as violating subsection (c) of Article VII, Section 18 that generally prohibits the Legislature from passing laws that are anticipated to result in reducing the percentage of a state tax shared with counties or municipalities as it existed in the aggregate on February 1, 1989 absent a 2/3 vote in each house of the Legislature.

2. Other:

The counties contend in their complaint that Ch. 2004-263, Laws of Florida, was an unlawful delegation of authority to the Chief Financial Officer and the Department of Juvenile Justice and that the law was void for vagueness. The court stated that these arguments "...present no sufficient basis to further attack the validity of the statute or warrant additional comment." Even though the court did not rule on these issues, the bill resolves several of these concerns.

The counties' basis for arguing unlawful delegation to the Chief Financial Officer relate to the provisions requiring withholding of county revenue sharing funds. The bill eliminates these provisions.

The counties cite two examples to support their argument that the law is void for vagueness. The first deals with the wording of 985.2155(3) which states that "each county or the state shall pay the costs incurred by the county in providing detention care for juveniles..." This bill modifies the language cited. The second example relates to revenue sharing provisions. This bill strikes these provisions.

B. RULE-MAKING AUTHORITY:

The Department of Juvenile Justice is given rule-making authority to implement the law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The law revises the effective date of Chapter 2004-263, Laws of Florida to July 1, 2005. It does not similarly revise a deadline of October 1, 2004 contained in section 1 of the act.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

⁹ Even though the court found that Ch. 2004-263, Laws of Florida, is not a criminal law, it did so without any guidance from the Legislature. Article VII, Section 18 (e) gives the Legislature specific authority to enact laws to implement the provision. This bill contains a declaration by the Legislature as to the correct implementation of Article VII, Section 18.