

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5019      PCB FC 06-10      Juvenile Justice

**SPONSOR(S):** Fiscal Council & Barreiro

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Fiscal Council	21 Y, 0 N	DeBeaugrine	Kelly
1) _____	_____	_____	_____
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4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

This bill conforms Chapter 985, F.S., to the House version of the General Appropriations Act. Specific provisions are as follows:

- o Eliminates statutory authority for juvenile boot camps.
- o Authorizes Sheriff's Training and Respect (STAR) programs.
- o Creates the Juvenile Justice Accountability Commission to conduct quality assurance and program evaluations.
- o Allows a court to hold a youth in secure detention for violation of the terms of an adjudication order until disposition and placement.
- o Requires the department to adopt uniform state rules on use of force and physical restraint.
- o Requires direct care staff to have received Protective Action Response certification prior to working with youth.
- o Revises definition of a "fiscally constrained county" for purposes of defining eligibility for state financial assistance to counties to cover their costs associated with secure detention. This has the effect of adding Wakulla, Sumter and Highlands counties to the list of counties eligible for state financial assistance.

The House version of the General Appropriations Act (GAA) includes a reduction of \$10.5 million to juvenile boot camp programs and additional appropriations of \$10.6 million for STAR programs. The House version of the GAA also transfers funds associated with the department's in-house quality assurance and data and research functions to the Juvenile Justice Accountability Commission. The expanded authority provided to the court to place youth in secure detention could increase utilization of secure detention beds and result in increased costs to the counties. The impact is indeterminate. The House version of the GAA includes \$822,421 in addition to that recommended by the Governor to continue state financial assistance to Wakulla, Highlands and Sumter counties as fiscally constrained counties. These funds will cover their costs of providing secure detention. There could also be an indeterminate impact on contract providers who will face more stringent requirements regarding staff qualifications and performance. The House version of the GAA includes a price level increase of \$16 million for contract service providers.

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

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**DATE:** 3/30/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote Personal Responsibility:** The bill provides additional tools to the judiciary to hold youth accountable for their behavior during the period of time between adjudication and final disposition.

**Reduce Government:** The bill creates an additional commission. However, this commission will assume quality assurance responsibilities that the Department of Juvenile Justice (DJJ) will no longer be required to provide.

#### B. EFFECT OF PROPOSED CHANGES:

##### Juvenile boot camps and STAR programs

###### ***Background:***

Section 985.309, F.S., authorizes boot camp programs for juvenile offenders. There are now four boot camps operating in the state of Florida. Each are moderate risk residential commitment programs. Eligibility for admission into a boot camp is limited to juveniles between the ages of 14 and 18 who are adjudicated for a felony with the exception of capital, life or violent first degree felonies. Youth are also required to be screened to ensure that only youth who have psychological and medical profiles conducive to success in the program are admitted.

Youth are to be placed in a program in or nearest to the judicial circuit in which the child was adjudicated unless such placement would not be in the best interest of the child or the boot camp was unable to accept the child. According to one sheriff that runs a boot camp, youth from other parts of the state are frequently referred to his program. The sheriff is unable to provide aftercare services to these youth and he feels that this negatively impacts the success of his program<sup>1</sup>.

According to s. 985.309, F.S., boot camps are to provide intensive educational, physical training and rehabilitation. The programs are, to varying degrees, modeled after military boot camps and feature intense physical activity and highly structured and disciplined daily routines. Each existing boot camp has its own unique approach within this basic framework and operates under the direct authority of the sheriff. Three of the four programs currently in operation in the state provide some form of aftercare when youth leave the residential phase of the program.

The boot camps are staffed by both sworn officers and non-sworn personnel. Sworn officers and non-sworn staff at boot camps that have completed the defensive tactics portion of the law enforcement training curriculum developed by the Criminal Justice Training and Standards Commission are authorized to use physical force and restraint techniques taught as part of this curriculum. Others are required to follow the department's Protective Action Response (PAR) protocol<sup>2</sup>. Current DJJ policy allows a staff person to work with youth prior to successfully completing training as long as certain "essential skills" are obtained. One such essential skill is "PAR trained," which is defined as 40 hours of training and at least one attempt at the test whether pass or fail<sup>3</sup>. Staff are allowed five attempts to pass the PAR written examination and performance evaluation<sup>4</sup>.

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<sup>1</sup> Personal conversation with Sheriff Grady Judd from Polk County on March 16, 2005.

<sup>2</sup> Florida Department of Juvenile Justice Protective Action Response Policy (FDJJ-1508-03) Effective Date 6/1/01, Revised 8/15/03.

<sup>3</sup> Memorandum from Secretary Anthony Schembri to the Executive Management Team dated March 4, 2005.

<sup>4</sup> Memorandum from Secretary Anthony Schembri to the Executive Management Team dated July 23, 2004.

According to testimony provided to the Criminal Justice Appropriations Committee, research on boot camps is inconclusive as to their effectiveness compared to other types of residential programs. In fact, many studies show the programs to be less effective than other residential models. As a result of these and other concerns, nine states have closed some or all of their boot camps for juveniles. Georgia converted its boot camps to "work camps" which place more emphasis on education and treatment than a military model<sup>5</sup>.

The operating budget for the Department of Juvenile Justice includes \$10.5 million for 320 boot camp residential beds and aftercare programs. Two programs, Collier and Bay, have closed since the department's initial operating budget was developed. Currently, four counties have boot camps (Manatee, Martin, Polk and Pinellas) that provide 260 residential beds<sup>6</sup>.

On January 6, 2006, Martin Lee Anderson died after an incident involving staff at the Bay County Boot Camp. This led to a series of workshops held by the House Criminal Justice Appropriations and House Juvenile Justice committees. Much of the testimony and discussion involved the lack of uniform rules regarding use of force and physical restraints, need for improved training for direct care staff, the need for an improved accountability system for juvenile justice programs based on best practices, and the need for a strong aftercare program when youth leave the residential phase of boot camp programs.

***Impact of bill:***

The bill repeals s. 985.309, F.S. which authorizes boot camps for children and creates a new section 985.3091 which authorizes Sheriff's Training and Respect (STAR) programs.

Prior to admission to a STAR program, youth will be required to receive substance abuse screenings in addition to medical and psychological screenings. Youth may only be admitted to a STAR program in the judicial circuit in which they were adjudicated unless this would not be in the child's best interest or the STAR program is unable to accommodate the child **and** the parents agree to placement outside the circuit. STAR programs will be required to provide both a residential component and aftercare assessment and services.

The department is required to adopt rules governing the operation of boot camps which prohibit the use of psychological intimidation techniques, physical force and restraint techniques except as necessary to protect the safety of youth or others or to maintain security. Physical force and restraint techniques are more specifically forbidden as disciplinary sanctions or to encourage compliance with program requirements. STAR programs will also be required to prominently display the telephone number of the abuse registry and allow youth access to a telephone to notify the abuse registry of complaints.

The bill requires the department to develop rules establishing training requirements for STAR programs requiring 120 hours for administrative staff and 200 hours for training for direct-care staff. Training requirements include state and federal laws related to child abuse, authorized disciplinary sanctions, limitations on use of physical force and restraints and psychological intimidation techniques, and CPR and other emergency medical procedures. The bill would prohibit a person from providing direct care to children in STAR programs until he or she has successfully completed training and certification requirements.

The bill does not allow children to be admitted into a STAR program until the department has adopted rules and verified that STAR programs are in compliance with the rules. Provision is made for the department to adopt emergency rules if necessary to allow for operation of programs starting July 1, 2006. According to s. 120.54(4), F.S. an emergency rule is valid for 90 days.

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<sup>5</sup> Presentation by Dr. Tom Blomberg to the House Criminal Justice Appropriations Committee on February 16, 2006.

<sup>6</sup> Department of Juvenile Justice 2005-2006 Approved Operating Budget and e-mail from Lucy Mohs, Department of Juvenile Justice Legislative Affairs Director sent October 3, 2005. The sheriff of Martin county advised the Department of Juvenile Justice in a letter dated December 16, 2006 that he would be closing his boot camp on June 30, 2006.

The bill creates a new s. 985.4055, F.S., which requires the department to develop uniform rules regarding protective action response that will apply to all programs under the jurisdiction of the department. The bill requires all direct care staff to have the necessary protective action response certification prior to working directly with youth.

## **Accountability Systems for Juvenile Justice Programs**

### ***Background:***

The Department of Juvenile Justice currently operates an in-house quality assurance program that uses staff working at DJJ programs as peer reviewers<sup>7</sup>. In addition, the department contracts with the Justice Research Center, Inc. to produce the Outcome Evaluation Report and Program Accountability Measures report<sup>8</sup>. Dr. Tom Blomberg with the Florida State University Center for Criminology and Public Policy delivered a presentation to the House Criminal Justice Appropriations Committee on accountability systems in juvenile justice programs across the nation on March 17, 2006. His presentation suggested a number of limitations associated with the current quality assurance and program evaluation methodologies utilized by the Department of Juvenile Justice. Among the limitations were the lack of autonomy associated with an in-house evaluation system, the fact that results were not used to replicate best practices or eliminate ineffective programs, and questions regarding the validity of evaluation scores since 44% of residential providers challenged their quality assurance scores in 2003 with 63% getting their scores increased.

### ***Impact of bill:***

The bill eliminates the in-house quality assurance program and transfers oversight for program evaluation to an independent Juvenile Justice Accountability Commission. The commission will be administratively housed within the department but is authorized to hire its own staff and is independent of control and direction from the Secretary of the department.

The commission will be composed of seven individuals appointed by the Governor who must represent all geographic areas of the state and include minorities and women. Members are not eligible for appointment to the commission if they have worked for a provider under contract to the department in the two years preceding their employment or bid for a department contract. The bill also precludes members of the commission from working for a provider under contract to the department or bidding for a department contract for two years after they leave the commission.

The commission will be required to meet at least four times per year in Tallahassee unless the chair determines that special circumstances require a meeting in another location.

The primary responsibility of the commission will be oversight of a contract to develop and implement a comprehensive evaluation and accountability system for each juvenile justice program. The evaluation protocol will be based on best practices identified and updated through continuous review of research literature related to juvenile justice programs. The commission will be responsible for an annual report to the department and policy makers on the results of the contractor's program evaluation results. The Commission will also serve as an information clearinghouse to local juvenile boards and provide policy recommendations to the Governor and Legislature.

Programs that fail to meet minimum performance standards will be immediately terminated if the deficiency is related to critical life safety standards. Programs who demonstrate deficiencies in other areas of their performance will be given six months to obtain compliance unless documented

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<sup>7</sup> See <http://www.djj.state.fl.us/djjservices/qa/introqa.pdf>

<sup>8</sup> Both reports available at <http://www.djj.state.fl.us/Research/index.html>

extenuating circumstances are present. These circumstances must be defined by the commission by rule rather than on a case-by-case basis.

### **Expanded authority of the court to use secure detention for certain adjudicated youth awaiting disposition**

#### ***Background:***

Under s. 985.215, F.S., a court, in determining whether to order secure, nonsecure, or home detention for a youth, must use the results of the risk assessment instrument (RAI) completed by a juvenile probation officer. The RAI incorporates the criteria for detention set forth in s. 985.215(2), F.S., which provides that a youth may be detained if he or she:

- Is alleged to have escaped or absconded;
- Is wanted in another jurisdiction for a felony;
- Has requested detention for his or her personal safety;
- Is charged with:
  - A capital, life, or first degree felony.
  - A second degree felony other than a drug offense under ch. 893, F.S.
  - A violent third degree felony.
  - A second or third degree felony drug offense under ch. 893, F.S., or a third degree non-violent felony and the youth has a record of failure to appear; a record of law violations prior to court hearings; has already been detained or has been released and is awaiting disposition; has a record of violent conduct resulting in physical injury; or is found to have been in possession of a firearm.
- Is alleged to have violated probation or conditional release.

If the RAI results do not warrant detention based on the aforementioned criteria, the court may not order detention for the youth unless: (a) the youth is charged with specified domestic violence offenses or with possession or discharge of a firearm on school property;<sup>9</sup> (b) the youth is detained on a judicial order for failure to appear and has previously failed to appear for an adjudicatory hearing or at two or more hearings in the same case;<sup>10</sup> or (c) the court enters written reasons for a deviation from the RAI results.<sup>11</sup>

If the youth is detained by the court, the maximum amounts of time in secure, nonsecure, or home detention that may be imposed are 21-days pre-adjudication and 15-days post-adjudication/predisposition. In either case detention may be extended for an additional 9 days if the court finds that the prosecution or defense require additional time and the charge is a capital, life, or first degree felony or a second degree felony involving violence. If such additional time is granted by the court, a maximum of 30-days pre-adjudication or 24-days post-adjudication/predisposition may be imposed.<sup>12</sup>

There have been questions raised by members of the judiciary as to their authority under this law to hold youths in secure detention past the statutory time limits established in law, even if there is clear evidence that the youths may be a danger to themselves or others.

#### ***Impact of bill:***

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<sup>9</sup> Section 985.215(2)(d) and (e), F.S.

<sup>10</sup> Section 985.215(2)(i) and (j), F.S. (authorizing a youth with such failure to appear record to be held in secure detention for up to 72 hours prior to the next scheduled court hearing).

<sup>11</sup> Section 985.215(2), F.S.

<sup>12</sup> Section 985.215(5)(g), F.S.

The bill enables a court to place an adjudicated youth in secure detention, notwithstanding the time limitations established elsewhere in statute, or on home detention with electronic monitoring until disposition in the following two circumstances:

- A youth has been found at the adjudicatory hearing to have committed a delinquent act or violation of law and has previously willfully failed to appear for other delinquency proceedings regardless of the youth's score on the RAI.
- A youth is found to be in contempt of court by violating a conditioned contained in the order of delinquency.

The bill requires a standard set of conditions to be imposed in the order of adjudication. They include compliance with a curfew, school attendance, and not engaging in ungovernable behavior. Ungovernable behavior is further defined to include the failure to obey reasonable and lawful demands of parents, teachers and others who are responsible for supervising the child and behavior that evidences a risk that the child will cause harm to others or the property of others.

### **Fiscally constrained counties**

#### ***Background:***

Current law authorizes state funding to offset the costs of providing secure detention to "fiscally constrained" counties. These counties must be within a rural area of critical state concern under s. 288.0656, F.S. for which the value of a mill is no more than \$3 million. A rural area of critical state concern is a designation conferred by the Governor and is limited to counties with a population of less than 75,000 or a county of less than 100,000 that is contiguous to a county with a population of less than 75,000 and that has been adversely affected by an extraordinary economic event or represents a unique economic development opportunity on a regional level.

Under this definition, 26 counties fall within a rural area of critical state concern. Chapter 2005-263, Laws of Florida, adds three counties that are not within a rural area of critical state concern to the list of counties eligible for funding to offset the costs of providing secure detention. The three counties are Wakulla, Highlands and Sumter. This authorization, however, expires June 30, 2006.

#### ***Impact of bill:***

The bill changes the definition of a fiscally constrained county to be any county for which the value of a mill is \$4 million or less. The effect is to make Wakulla, Highlands and Sumter eligible for state assistance to cover their costs associated with secure detention. If the value of a mill exceeds \$4 million in the future for these three counties or any of the existing 26 counties, the county would no longer be eligible for assistance. The House version of the General Appropriations Act contains sufficient funding to cover financial assistance for the three counties that would be added under this bill.

#### **C. SECTION DIRECTORY:**

- Section 1. Amends s. 985.207, F.S., related to taking youths into custody.
- Section 2. Amends s. 985.215, F.S., related to use of secure detention.
- Section 3. Amends s. 985.2155, F.S., related to fiscally constrained counties.
- Section 4. Amends s. 985.228, F.S., relating to orders of adjudication of delinquency.
- Section 5. Amends s. 985.231, F.S., to correct cross reference.
- Section 6. Amends s. 985.308, F.S., to correct cross reference.
- Section 7. Repeals s. 985.309, F.S., authorizing boot camps for children.
- Section 8. Creates s. 985.3091, F.S., authorizing Sheriff's Training and Respect (STAR) programs.
- Section 9. Amends s. 985.311, F.S., to correct cross reference.
- Section 10. Amends s. 985.404, F.S., to correct cross reference.
- Section 11. Creates s. 985.4055, F.S., to require statewide Protective Action Response (PAR) rules.
- Section 12. Creates s. 985.4056, F.S., to create the Juvenile Justice Accountability Commission.

- Section 13. Amends s. 985.412, F.S., related to the current quality assurance process.  
Section 14. Amends s. 958.04, F.S., to update terminology to conform to boot camp changes.  
Section 15. Amends s. 958.046, F.S. to correct cross reference.  
Section 16. Amends s. 985.31, F.S., to correct cross reference.  
Section 17. Amends s. 985.314, F.S., to correct cross reference.  
Section 18. Amends s. 985.315, F.S., to correct cross reference.  
Section 19. Provides effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
Insignificant (see Fiscal Comments)
2. Expenditures:

The House version of the General Appropriations Act (GAA) contains a reduction of \$10.5 million associated with the elimination of boot camps. Approximately \$10.6 million is provided to Sheriff's Respect and Training programs for residential services and aftercare.

The House version of the GAA transfers \$2.5 million associated with the department's in-house quality assurance and data and research functions to the Juvenile Justice Accountability Commission to provide salaries for 2 FTE to support the Commission and to contract with the Florida State University Center for Criminology and Public Policy Research to develop and implement an independent quality assurance program.

There could be additional costs associated with personnel turnover and additional training required due to direct care staff not being qualified to work with youth under the provisions of this bill. This impact is indeterminate since data are not available to indicate how many current or future staff would fall under this exclusion. The House version of the GAA contains \$4.5 million for merit-based pay raises for department staff that provide direct care to youth who exceed performance expectations, have clean disciplinary records, and acquire training in excess of the minimum required for their job class. This may mitigate the impact of these provisions by providing an incentive for staff to increase their level of training and competence.

The House version of the GAA contains \$822,422 to continue to provide assistance for the cost of providing secure detention to Wakulla, Sumter and Highlands counties for FY 2006-07.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:

The provisions of the bill that allow additional options to judges to detain youth could increase utilization of pre-disposition detention. This could increase the cost of secure detention to counties if a significant increase in utilization actually materializes. The DJJ has not submitted an estimate of this impact to the House Fiscal Council, but an analysis of a similar proposal last session indicated an indeterminate impact<sup>13</sup>. Further, DJJ representatives have recently indicated that adjudicatory and disposition hearings are held simultaneously in the majority of delinquency cases<sup>14</sup>. The bill's

<sup>13</sup> Department of Juvenile Justice bill analysis on strike all amendment to HB 1863 prepared April 19, 2005.

<sup>14</sup> Telephone conversation with Department of Juvenile Justice staff on 3/28/2006.

provisions would have no effect on these cases. Therefore, the impact is anticipated to be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private contract providers could incur additional costs associated with staff turnover due to the requirement that staff have completed basic training and passed exams prior to working directly with youth. The House version of the GAA provides a price level increase of \$16 million for contract providers which could be used to offer better pay and benefits to attract more qualified workers.

Some private providers may lose contracts with the department if they are unable to meet acceptable performance standards within the time frames specified by the bill.

The department's current quality assurance process requires private providers to donate staff to serve as voluntary peer reviewers to assist with quality assurance reviews. Preliminary discussions with the Florida State University Center for Criminology and Public Policy Research indicate that this practice is unlikely to continue once the Center assumes responsibility for quality assurance reviews.

D. FISCAL COMMENTS:

The Department of Juvenile Justice has not submitted an analysis of this PCB to the House Fiscal Council.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

There is the potential for increased utilization of predisposition secure detention which would result in increased costs to counties. The expected impact is indeterminate but most likely insignificant. Also, the bill is a criminal law in that it deals with options available to the judiciary to respond to individuals who have been adjudicated delinquent for violating the criminal laws of this state. Therefore, the bill would appear to be exempt from the provisions of Article VII, Section 18(a).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The department is required to adopt rules to implement STAR programs and to establish statewide Protective Action Response regulations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES