

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/SB 1322 (105452)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Latvala

SUBJECT: Juvenile Detention Costs

DATE: February 24, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1322 creates a new cost sharing methodology for calculating the shared county and state financial obligations for juvenile detention that reduces the amount that will be paid by counties that are not fiscally constrained (non-fiscally constrained counties) compared to current law. The bill requires non-fiscally constrained counties to pay a total of \$42.5 million for detention care costs in Fiscal Year 2016-2017, and requires the state to pay the remaining costs. In subsequent years, the bill requires each non-fiscally constrained county and the state to each pay 50 percent of the total costs of providing detention care in the county. The bill continues current law requiring the state to pay all costs for providing detention care for fiscally constrained counties and juveniles residing out of state.

The bill eliminates “final court disposition” as the demarcation between county and state financial obligations for juvenile detention, replacing it with a cost sharing relationship based on actual costs and county utilization.

The Department of Juvenile Justice (DJJ) indicates that the total required payments for non-fiscally constrained counties in Fiscal Year 2015-2016 is \$54.3 million. The bill’s provision for non-fiscally constrained counties to pay a total of \$42.5 million in shared detention costs for Fiscal Year 2016-2017 will make the counties responsible for paying \$11.8 million less than in Fiscal Year 2015-2016. The DJJ estimates that it will need an appropriation of \$8.8 million in general revenue funds above the amount appropriated for juvenile detention care in Senate

Bill 2500, the Senate proposed 2016-2017 General Appropriations Bill, to offset the bill's reduction in the counties' payments for Fiscal Year 2016-2017. For Fiscal Year 2017-2018, when the total costs for detention care for non-fiscally constrained counties will be split equally between the state and those counties, the DJJ estimates that it will need an appropriation of \$6.2 million more in general revenue funds above the amount appropriated for juvenile detention care in SB 2500. The amount for subsequent years should be similar, with adjustments for variances in costs.

The bill takes effect upon becoming a law.

II. Present Situation:

The DJJ operates a statewide secure detention system for youth who are charged with committing delinquent acts. The detention care process begins when the DJJ receives custody of a juvenile from a law enforcement agency which has taken the juvenile into custody:

- Upon assuming custody, the DJJ decides whether to place the juvenile in detention care as provided in s. 985.25, F.S., based upon an assessment of risk as provided in s. 985.245, F.S.
- If the DJJ places the juvenile in detention care, a court hearing must be held within 24 hours of the time that the juvenile was taken into custody. At the hearing, the court considers a number of factors to determine whether the juvenile should be kept in continued detention. Section 985.255, F.S., provides these factors, which include current offenses, prior history, legal status, and aggravating or mitigating factors.
- If the court orders the juvenile to be held in secure detention, the detention cannot extend beyond 48 hours unless the court holds another hearing and finds in writing that continued detention is necessary to protect the victim from injury.
- The juvenile may be held in detention until a disposition hearing is held to determine whether the juvenile committed a delinquent act and, if necessary, until the juvenile is sentenced.¹
- A juvenile who is adjudicated delinquent may be kept in detention for a limited time while awaiting placement in a residential commitment program.²

The detention program provides 24-hour care and supervision to juveniles in physically secure facilities, with educational programming provided by individual school districts. The DJJ detention staff transports detained youth to and from court and residential commitment facilities.

Currently, the DJJ operates secure detention facilities in 21 counties with a total of more than 1,300 beds. During Fiscal Year 2014-2015, the DJJ served a total of 15,580 individual youth in secure detention facilities. Marion County, Polk County, and Seminole County operate their own detention centers.

¹ Section 985.26, F.S., provides that pre-hearing detention care is limited to 21 days unless the court has commenced an adjudicatory hearing in good faith. For certain serious offenses, the time may be extended to 30 days before an adjudicatory hearing is commenced. There are also provisions for continued detention beyond these limits to account for continuances granted by the court. In such cases, the court must hold a hearing at the end of every 72 hour period to determine whether continued detention is appropriate and whether further continuance of the hearing is needed.

² Sections 985.26 and 985.27, F.S., govern the length of time that a juvenile may be held in detention care after an adjudication of delinquency.

In 2004, the Legislature enacted s. 985.686, F.S., requiring joint financial participation by the state and counties in the provision of juvenile detention. The statute made counties responsible for pre-dispositional detention costs and the DJJ responsible for post-dispositional detention costs, costs for detention care in fiscally constrained counties,³ and costs for out-of-state youth. Historically, the counties were held responsible for 74 percent of detention costs and the state was responsible for 26 percent. The DJJ's apportionment of costs has been a source of administrative litigation by counties.

In June 2013, the First District Court of Appeal (DCA) affirmed an administrative law judge's order invalidating rules that the DJJ had promulgated in 2010 to clarify the state and the counties' responsibilities. According to the order, the rules at issue shifted a greater responsibility for costs to the counties than was required by the relevant statute. The opinion had the effect of significantly decreasing the counties' fiscal responsibility and increasing the state's financial responsibility.⁴

Administrative petitions have been filed to contest reconciliations for fiscal years since 2008-2009. The DJJ initially entered into stipulations relating to Fiscal Years 2009-2010, 2010-2011, and 2011-2012. These stipulations included all detention after violations of probation as solely in the state's share of costs. However, the DJJ subsequently determined the statute required that counties should pay for the costs of new law violations of probation and the state would pay for the costs of other violations of probation. In May 2014, the DJJ promulgated new rules to implement its understanding of the sharing of costs in accordance with the statute.⁵ The Florida Association of Counties and a number of individual counties filed administrative challenges to the new rule.⁶ In April 2015, the Division of Administrative Hearings (DOAH) upheld the DJJ's interpretation of "final court disposition" and other significant sections of the proposed rule.⁷ The decision is currently on appeal in the First DCA.⁸

In 2014 and 2015, a number of counties ceased to pay, or paid a reduced portion, of their share of the costs of detention costs due to their dispute concerning the DJJ's billing. The Implementing Bill for the Fiscal Year 2015-2016 General Appropriations Act included a requirement for the DJJ to notify the Department of Revenue (DOR) when counties don't pay their share of the costs, and for the DOR to transfer funds from the counties revenue sharing accounts to the DJJ to make up any shortfall.⁹ Volusia County has not paid its Fiscal Year 2015-2016 share, and

³ The term "fiscally constrained county" is currently defined to mean "a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1. Currently, 29 counties are considered fiscally constrained. Prior to 2014, the definition referred to a "rural area of critical economic concern" rather than a "rural area of opportunity," but included the same criteria.

⁴ *Dep't of Juvenile Justice v. Okaloosa County*, 113 So.3d 1074 (Fla. 1st DCA 2013).

⁵ Rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017, Florida Rules of Administrative Procedure.

⁶ The petitioners were: Volusia County (Case No. 14-2799RP); Broward County (Case No. 14-2800RP); Orange County (Case No. 14-4512RP); and the Florida Association Of Counties and Alachua, Bay, Brevard, Charlotte, Collier, Escambia, Flagler, Hernando, Hillsborough, Lake, Lee, Leon, Manatee, Martin, Nassau, Okaloosa, Palm Beach, Pinellas, Santa Rosa, Sarasota, St. Johns, St. Lucie, and Walton counties (Case No. 14-2801RP). Duval County Jacksonville intervened in all the petitions.

⁷ DOAH Final Order in Case Nos. 14-2799RP, 14-2800RP, 14-2801RP and 14-4512RP (April 22, 2015), available at <https://www.doah.state.fl.us/ROS/2014/14002799.pdf> (last visited February 8, 2016).

⁸ *Volusia County v. Department of Juvenile Justice*, Case No. 1D15-2298 (Fla. 1st District Court of Appeal).

⁹ Section 38 of ch. 2015-222, Laws of Florida.

Manatee and Okaloosa counties have made partial payments. These counties have filed administrative petition challenging the revenue recovery provision in the DOAH¹⁰, and a number of other counties have filed complaints in circuit court.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 985.686, F.S., relating to shared county and state responsibility for juvenile detention. It adds the term “total shared detention costs” and defines it to mean:

The amount of funds expended by the department for the costs of detention care for the prior fiscal year. This amount is including the most recent actual certified forward amounts minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.

For Fiscal Year 2016-2017, the bill requires non-fiscally constrained counties to pay a total of \$42.5 million, with each county paying its percentage share of detention use. A county's percentage share of that amount is determined by dividing the number of juvenile detention days for juveniles residing in that county in the most recently completed 12-month period by the total number of detention days for juveniles in all non-fiscally constrained counties during that time period. The bill requires that the DJJ calculate and provide each county with its percentage share by June 1, 2016. Each county is then required to pay its percentage share in 12 equal payments on the first of each month, beginning on July 1, 2016. The state is required to pay the remaining actual costs of detention care.

In Fiscal Year 2015-2016, non-fiscally constrained counties will pay a total of \$54.3 million annually. Thus, the bill will reduce the total payment for non-fiscally constrained counties by approximately \$11.8 million in Fiscal Year 2016-2017, as compared to what those counties will pay in Fiscal Year 2015-2016.

Beginning in Fiscal Year 2017-2018, the bill will require non-fiscally constrained counties to annually pay a total of 50 percent of total shared detention costs for the prior fiscal year. The bill requires the DJJ to provide each non-fiscally constrained county with its annual percentage share (based upon “the most recently completed 12-month period”) of total shared detention costs by June 1, 2017 for Fiscal Year 2017-2018 and each successive fiscal year thereafter. Beginning July 1, non-fiscally constrained counties must make payments in 12 equal installments to the DJJ on the first day of each month of the fiscal year.

The bill continues current law requiring the state to pay the costs of detention in fiscally constrained counties, and codifies current practice by which the state pays detention costs for juveniles who are not residents of Florida. The bill also requires the state to pay all costs of

¹⁰ The administrative petitions are Case No. 15-6458 (Okaloosa County and Manatee County) and Case No. 15-6459 (Volusia County) and are set for hearing on February 19, 2016.

¹¹ The following counties are plaintiffs in civil complaints that include challenges to the revenue recovery provision: Alachua, Bay, Charlotte, Collier, Hillsborough, Manatee, Marion, Martin, Nassau, Okaloosa, Polk, St. Lucie, and Walton. The cases were all filed in the Circuit Court for the Second Judicial Circuit in and for Leon County and have been consolidated into *Charlotte County, Florida et al. v. Daly*, Case No. 2014 CA 1885 (Fla. 2d Judicial Circuit).

detention care for juveniles housed in state detention centers in counties that provide their own detention care.

Finally, this section of the bill deletes a statutory provision that requires the DOR and the counties to provide technical assistance to the DJJ in order to develop the most cost effective means of collecting payments.

Section 2 amends s. 985.6015(2), F.S., to remove references to predisposition juvenile detention.

Section 3 amends s. 985.688(11), F.S., to remove references to preadjudication detention and preadjudication detention care.

Section 4 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DJJ indicates that the total required payments for non-fiscally constrained counties in Fiscal Year 2015-2016 is \$54.3 million.

Under PCS/SB 1322, the provision for non-fiscally constrained counties to pay a total of \$42.5 million in shared detention costs for Fiscal Year 2016-2017 will make the counties responsible for paying \$11.8 million less than in Fiscal Year 2015-2016. The DJJ estimates that it will need an appropriation of \$8.8 million in general revenue funds above the amount appropriated for juvenile detention care in Senate Bill 2500, the Senate

2016-2017 General Appropriations Bill, to be able to offset the bill’s reduction in the counties’ payments for Fiscal Year 2016-2017.

For Fiscal Year 2017-2018, when the total costs for detention care for non-fiscally constrained counties will be split equally between the state and those counties, the DJJ estimates that it will need an appropriation of \$6.2 million more in general revenue funds above the amount appropriated for juvenile detention care in SB 2500. The amount for subsequent years should be similar, with adjustments for variances in costs. The table below illustrates the current situation and the effect of the bill on cost sharing:

Effect of SB 1332 on Juvenile Detention Cost Sharing								
Fiscal Year	Estimated Total Costs (non-fiscally constrained counties)	State Contribution	State Percentage	Estimated Increase in State Contribution above Fiscal Year 2015-2016	Estimated new GR Needed above SB 2500 Funding	County Share	County Percentage	Difference in County Share as compared to Fiscal Year 2015-2016
2015-2016	\$91.5 mil	\$37.2 mil	40.70%	N/A	N/A	\$54.3 mil	59.30%	N/A
2016-2017	\$91.5 mil	\$49.0 mil	53.60%	\$11.8 mil	\$8.8 mil	\$42.5 mil	46.40%	(11.8 mil)
2017-2018	\$92.8 mil	\$46.4 mil	50.00%	\$ 9.2 mil	\$6.2 mil	\$46.4 mil	50.00%	(7.9 mil)

VI. Technical Deficiencies:

- Consideration should be given to amending lines 32-33 to read: “This amount includes the amount of funds certified forward during that fiscal year, but does not include any funds expended or certified forward for detention care for juveniles residing in fiscally constrained counties.”
- On line 48, the word “actual” should be deleted to be consistent with the wording on lines 66-67 pertaining to the state paying the remaining costs of detention care.
- On lines 42 and 57-58, consideration should be given to amending the phrase “the most recently completed 12-month period” to allow sufficient time for the department to obtain detention data and calculate each county’s annual share of detention days. For example, if the notice is required by June 1, the phrase could be “the 12-month period that ended on the previous April 30.”
- The bill implies that the DJJ will provide each county with the total shared detention costs, but does not specify a due date for doing so. For Fiscal Year 2017-2018 and thereafter, it is impractical for the DJJ to be able to provide each county with the total shared detention costs necessary for the county to pay the first installment of its annual percentage share of total shared detention costs on July 1 of each year. Total shared detention costs are based on costs for the prior fiscal year, which ends on the day before the payments are due. Therefore, consideration should be given to requiring that the DJJ provide the total shared detention costs by July 15 and that each county’s first payment be due on August 1 of each year. However, this will require adjustment of the payment schedule for Fiscal Year 2016-2017 so that there is not a gap in the requirement to make a payment each month.
- On line 57, the word “in” included in the phrase “in the most recently” should be replaced by “for” to be consistent with the wording of the phrase on lines 41-42.
- On line 79, the word “in” before the word “counties” should be replaced by “who are from.” Generally, a juvenile is detained in the state detention center that serves the county in which he or she is taken into custody. The state detention center may not be in the same county

where the child is taken into custody. It is the juvenile's county of residence, and not the county in which the state detention center is located, that determines whether the state pays all costs of detention care for the juvenile.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 985.686, Florida Statutes, and makes conforming amendments to sections 985.6015 and 985.688, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 11, 2016:

The committee substitute:

- Provides that non-fiscally constrained counties will pay a proportionate share of total shared detention costs for the prior fiscal year, rather than the prior calendar year.
- Provides that the percentage share of detention days will be based on the most recently completed 12-month period, rather than the prior calendar year.
- Adds conforming amendments to ss. 985.6015 and 985.688, F.S.

- B. **Amendments:**

None.