

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 1004

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Persons Authorized to Visit Juvenile Facilities

DATE: January 17, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1004 authorizes the following persons to visit at their pleasure between the hours of 6 a.m. and 11 p.m. all facilities housing juveniles that are operated or overseen by the Department of Juvenile Justice (DJJ) or a county:

- The Governor;
- A Cabinet member;
- A member of the Legislature;
- A judge of a state court;
- A state attorney;
- A public defender; and
- A person authorized by the secretary of the DJJ.

The bill provides that a person specified may visit a state facility housing juveniles between 11 p.m. and 6 a.m. pursuant to rules prescribed by the DJJ.

The bill states that permission to visit a state facility housing juveniles must not be unreasonably withheld from a person who gives sufficient evidence that he or she is a bona fide reporter or writer.

The bill requires the DJJ to make rules for purposes of implementing the bill.

The bill is effective July 1, 2018.

## II. Present Situation:

### Juvenile Detention Centers and Residential Facilities

Juveniles within the Florida juvenile justice system may be housed in detention centers and/or residential facilities.

#### *Juvenile Detention Centers*

There are 21 juvenile detention centers throughout Florida. Detention is the custody status for juveniles who are held pursuant to a court order or after being taken into custody for a violation of law. Detention centers provide custody, supervision, education, and mental health/substance abuse and medical services to juveniles.<sup>1</sup>

Generally a juvenile cannot be held in detention care for longer than 24 hours.<sup>2</sup> Section 985.255, F.S., requires a juvenile to have a detention hearing to determine the existence of probable cause and the need for continued detention within 24 hours of being taken into custody and placed in detention.<sup>3</sup> A juvenile cannot be held in detention for more than 21 days unless an adjudicatory hearing has been commenced.<sup>4</sup> The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare for cases involving certain serious crimes.<sup>5</sup> A prolific juvenile offender<sup>6</sup> may also be held for 15 days after the order of adjudication.<sup>7</sup>

#### *Juvenile Residential Commitment Programs*

The DJJ contracts with private providers that operate the residential commitment programs throughout Florida. Residential programs provide behavioral health, mental health, substance abuse, and sex offender treatment services to juveniles.<sup>8</sup> In Florida, only a judge can place a juvenile into a DJJ residential commitment program for an adjudication. Commitment to a residential program is for an indeterminate period of time and may include periods of temporary release.<sup>9</sup>

Each residential program is monitored regularly and evaluated through the DJJ's Bureau of Monitoring and Quality Improvement (Bureau).<sup>10</sup> The Bureau conducts reviews throughout the

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<sup>1</sup> Florida Department of Juvenile Justice, *Detention Services*, available at <http://www.djj.state.fl.us/services/detention> (last visited January 9, 2018).

<sup>2</sup> Section 985.26(1), F.S.

<sup>3</sup> Section 985.255(3)(a), F.S.

<sup>4</sup> Section 985.26(2) and (3), F.S.

<sup>5</sup> These serious crimes include capital felonies, life felonies, and first or second degree felonies. Section 985.26(2), F.S.

<sup>6</sup> A juvenile is a prolific juvenile offender if the juvenile: is charged with a delinquent act that would be a felony if committed by an adult; has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the current charge; and has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult: an arrest event for which a disposition has not been entered, an adjudication or an adjudication withheld. Section 985.255(1)(j), F.S.

<sup>7</sup> Section 985.26(3), F.S.

<sup>8</sup> Florida Department of Juvenile Justice, *Residential Services*, available at <http://www.djj.state.fl.us/services/residential> (last visited January 9, 2018).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

fiscal year to ensure that the programs are in compliance with contract terms and conditions, Florida Statutes, Rules of the Florida Administrative Code, and the DJJ policies.<sup>11</sup>

### ***Investigation into State Facilities Housing Juveniles***

A recent investigation conducted by the *Miami Herald* delved into the DJJ's detention centers and residential programs. The investigation probed 10 years of the DJJ's incident reports, investigations and reviews, inspections, emails, and surveillance videos, revealing incidents of misconduct that have occurred at the DJJ's facilities over the years.<sup>12</sup> The article discussed some of the symptoms that have plagued the DJJ's facilities over the years: inexperienced and underpaid staff, inadequate personnel screening and standards, tolerance for cover-ups, faulty security cameras, and legal impunity for abusive staffers.<sup>13</sup>

In response to the article, the DJJ issued a press release, stating that the stories published in the *Miami Herald* did not accurately define the juvenile justice system in Florida. The DJJ's response addressed each claim asserted in the *Miami Herald* article and further stated that the article ignored the aggressive reforms that the DJJ has implemented over the past six years.<sup>14</sup> A subsequent article published by the *Miami Herald* evidenced that the investigation had furthered discussion between lawmakers surrounding potential initiatives and reform for the DJJ's facilities.<sup>15</sup>

### **Visitation of State Juvenile Facilities**

Currently, any member of the Legislature who wishes to tour any of the detention centers or residential programs may arrange a visit with the DJJ Legislative Affairs Office or may schedule a visit of any of the DJJ's facilities on his or her own accord.<sup>16</sup> In contrast, any member of the Legislature, including other specified persons, have unrestricted visitation privileges to state correctional facilities.<sup>17</sup>

On October 18, 2018, the DJJ sent a letter to members of the Legislature concerning the visitation of the DJJ's facilities. The letter addressed unannounced visits to the DJJ's facilities and the differences between adult correctional facilities and the DJJ's facilities. The letter noted that juveniles in the DJJ's programs are statutorily entitled to a degree of confidentiality while adult offenders are not entitled to such protections. Specifically, s. 985.04, F.S., requires a

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<sup>11</sup> Florida Department of Juvenile Justice, *Monitoring and Quality Improvement*, available at <http://www.djj.state.fl.us/partners/QI> (last visited January 9, 2018).

<sup>12</sup> Audra D.S. Burch and Carol Marbin Miller, *Dark secrets of Florida juvenile justice: 'honey-bun hits,' illicit sex, cover-ups*, MIAMI HERALD, October 10, 2017, available at <http://www.miamiherald.com/news/special-reports/florida-prisons/article177883676.html> (last visited January 9, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> Press Release, Florida Department of Juvenile Justice, *Setting the Record Straight: Miami Herald Omits Facts, Ignores Reforms in Series Targeting DJJ* (October 10, 2017) (on file with the Senate Committee on Criminal Justice).

<sup>15</sup> Mary Ellen Klas, Caitlin Ostroff and Carol Marbin Miller, *Powerful lawmaker calls for juvenile justice review in wake of Herald series*, MIAMI HERALD, October 13, 2017, available at <http://www.miamiherald.com/news/local/community/miami-dade/article178771326.html> (last visited January 9, 2018).

<sup>16</sup> Email from Rachel Moscoso, Legislative Affairs Director, Florida Department of Juvenile Justice, to Lauren Storch, Attorney, The Florida Senate Committee on Criminal Justice, (October 26, 2017) (on file with the Senate Committee on Criminal Justice).

<sup>17</sup> Section 944.23, F.S.

juvenile's information to be kept confidential. The letter further noted that many of the juveniles suffer from previous trauma and interruptions to their daily schedules can be problematic. The letter requests that members of the Legislature wishing to visit a DJJ facility take these noted circumstances into consideration.<sup>18</sup>

### **Visitation of State Correctional Institutions**

Section 944.23, F.S., authorizes the following persons to visit at their pleasure all state correctional institutions:

- The Governor;
- All Cabinet members;
- Members of the Legislature;
- Judges of state courts;
- State attorneys;
- Public defenders; and
- Authorized representatives of the Florida Commission on Offender Review.<sup>19</sup>

Current law prohibits any person not otherwise authorized by law from entering a state correctional institution except pursuant to rules prescribed by the Department of Corrections (DOC). Additionally, permission to visit state prisons must not be unreasonably withheld from those who give sufficient evidence to the DOC that they are bona fide reporters or writers.<sup>20</sup>

### **III. Effect of Proposed Changes:**

The bill authorizes the following persons to visit at their pleasure between the hours of 6 a.m. and 11 p.m. all facilities housing juveniles that are operated or overseen by the DJJ or a county:

- The Governor;
- A Cabinet member;
- A member of the Legislature;
- A judge of a state court;
- A state attorney;
- A public defender; and
- A person authorized by the secretary of the DJJ.

The bill provides that a person specified may visit a state facility housing juveniles between 11 p.m. and 6 a.m. pursuant to rules prescribed by the DJJ.

The bill prohibits the DJJ from unreasonably withholding permission to visit a state facility housing juveniles from a person who provides sufficient evidence that he or she is a bona fide reporter or writer.

The bill requires the DJJ to make rules for purposes of implementing the bill.

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<sup>18</sup> *Supra* n. 8.

<sup>19</sup> Section 944.23, F.S.

<sup>20</sup> *Id.*

The bill is effective July 1, 2018.

**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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 985.6885 of the 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.)

**CS by Criminal Justice on January 16, 2018:**

The Committee Substitute:

- Adds facilities housing juveniles that are county-run to the list of facilities included under the bill;
- Removes members of the Florida Commission on Offender Review from the list of personnel authorized to visit facilities housing juveniles under the bill; and
- Requires the DJJ to make rules for the purpose of implementing the bill.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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