

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 Criminal Justice

BILL: SB 942

INTRODUCER: Senator Bracy

SUBJECT: Department of Juvenile Justice's Direct-support Organization

DATE: January 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 942 reenacts statutory authority (s. 985.672, F.S.) for the Florida Department of Juvenile Justice to establish a direct-support organization to provide assistance, funding, and support to assist the DJJ in furthering its goals. The bill removes a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted.

The Florida Juvenile Justice Foundation, Inc., is the direct-support organization designated by the DJJ to provide assistance, funding, and support for the DJJ.

Staff of the Senate Committee on Criminal Justice finds that the DJJ and the Florida Juvenile Justice Foundation, Inc., are in compliance with most statutory requirements relevant to direct-support organizations.

The bill has no fiscal impact on state government.

The bill is effective July 1, 2018.

II. Present Situation:

Florida Department of Juvenile Justice

The DJJ was established in 1994 in an effort to shift the state's juvenile justice system away from a social services model. The Legislature created the DJJ to provide for the transfer of powers, duties, property, records, personnel, and unexpended balances of related appropriations and other funds from the Juvenile Justice Program Office within the Department of Health and Rehabilitative Services. This transition assigned responsibility to the DJJ for cases involving

juvenile delinquency and children and families in need of services.¹ The DJJ is tasked with developing and coordinating comprehensive services and programs statewide for the prevention, early intervention, control, and rehabilitative treatment of delinquent behavior.²

Florida Juvenile Justice Foundation, Inc.

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily-created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The purpose and functions of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

From 1994-1999, the DJJ had an ongoing partnership with the Florida Business Partners for Prevention (FBPP). At the time, the DJJ lacked statutory authority to have a DSO. In 1999, the Legislature created s. 985.672, F.S., authorizing the DJJ to establish a DSO to provide assistance, funding, and support for the DJJ in carrying out its mission.³ In 2000, the FBPP incorporated by the name of Florida Business Partners for Juvenile Justice, Inc., to provide such assistance, funding, and support to the DJJ.⁴ The name was changed to the Florida Juvenile Justice Foundation, Inc. (Foundation) in 2006.⁵

Repeal of s. 985.672, F.S., and DSO Compliance Review

Section 20.058(5), F.S., provides that laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. This subsection further provides that CSOs or DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019. Section 985.672, F.S., provides that the section is repealed October 1, 2018, unless reviewed and saved from repeal by the Legislature.

Staff of the Senate Committee on Criminal Justice reviewed relevant materials to determine if the DJJ and the Foundation comply with the requirements of s. 985.672, F.S., and with other statutory requirements for DSOs: s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements); s. 215.981, F.S. (CSO/DSO Audit Requirements); and s. 112.3251, F.S. (CSO/DSO Ethics Code Requirements). Staff finds that the DJJ and the Foundation are in compliance with most of the relevant DSO statutory requirements.

¹ Florida Department of Juvenile Justice, *History*, available at <http://www.djj.state.fl.us/about-us/history> (last visited January 3, 2018).

² Section 985.02(3), F.S.

³ Section 985.672, F.S., was created in 1999 by ch. 1999-284, L.O.F.

⁴ Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Approved and filed January 28, 2000) (on file with the Senate Committee on Criminal Justice).

⁵ Articles of Amendment to Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Filed February 8, 2006) (on file with the Senate Committee on Criminal Justice).

Staff Review of Compliance with s. 985.672, F.S. (DSO to Florida Department of Juvenile Justice)

Establishment of DSO

Section 985.672, F.S., authorizes the DJJ to establish a DSO whose sole purpose is to support the juvenile justice system. For purposes of s. 985.672, F.S., “direct-support organization” means an organization that is:

- A corporation not-for-profit incorporated under ch. 617, F.S., and approved by the Department of State;
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by the DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the adopted goals and mission of the DJJ.⁶

Staff Finding: Compliance. The Foundation meets the definition of “direct-support organization.” In 2000, the Foundation was established.⁷ The Foundation is a Florida non-profit corporation under ch. 617, F.S., and is approved by the Department of State.⁸ The DJJ’s mission is, “to increase public safety by reducing juvenile delinquency through effective prevention, intervention and treatment services that strengthen families and turn around the lives of troubled youth.”⁹ The Foundation works toward advancing the DJJ’s mission by funding programs such as the Youth Investment Award program, which provides financial assistance designed to further the education and employability of juvenile justice-involved youth. Additionally, the Foundation funds back-to-school drives, Youth Success Week, the Human Trafficking Summit, in addition to running a national grant to support the Juvenile Detention Alternatives initiative.¹⁰

Expenditures of the Foundation

Section 985.672(1), F.S., provides that expenditures of the DSO shall be used for the prevention and amelioration of juvenile delinquency and may not be used for the purpose of lobbying as defined in s. 11.045, F.S.

Staff findings: Compliance. The Foundation’s IRS Form 990 for 2015-16 shows that the majority of expenditures were for conferences, conventions, meetings, and youth programs. Additionally, the form shows that there were no expenditures made for the purposes of lobbying.¹¹

⁶ Section 985.672(1)(a)-(c), F.S.

⁷ *Supra*, n. 4.

⁸ The Foundation’s information is available at <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> by searching Florida Juvenile Justice Foundation, Inc. (last visited January 16, 2018).

⁹ Florida Department of Juvenile Justice, *Mission*, available at <http://www.djj.state.fl.us/about-us/mission> (last visited January 18, 2018).

¹⁰ Transmittal letter dated August 15, 2017, from the DJJ Secretary Christina K. Daly to Senate President Joe Negron, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF> (last visited on January 16, 2018).

¹¹ The IRS Form 990 for 2015-16 is the most recent tax form provided by the DJJ and the Foundation. According to DJJ staff, this is because the deadline for the submission of the tax form is in September, while the deadline to report information

Contractual Agreement Between the DJJ and the Foundation

Section 985.672(2), F.S., provides that the DSO must operate under a written contract with the DJJ and the contract must include certain provisions.

Approval of the Articles of Incorporation and Bylaws

The contract must provide for approval of the articles of incorporation and bylaws of the DSO by the DJJ.¹²

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the approval of the Foundation's articles of incorporation and bylaws by the DJJ prior to adoption by the Foundation.¹³

Submission of an Annual Budget

The contract must provide for the DSO to submit an annual budget for the approval of the DJJ.¹⁴

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the review and approval of the Foundation's annual budget prior to adoption by the Foundation.¹⁵

Certification by the DJJ that the DSO is in Compliance

The contract must provide for certification by the DJJ that the DSO is complying with the terms of the contract and in a manner consistent with the goals and purposes of the DJJ and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the DSO.¹⁶

Staff findings: Not in compliance. The contract between the DJJ and the Foundation provides for such annual certification of the Foundation by the DJJ. However, the contract does not provide for the annual certification to be reported in the official minutes of a meeting of the Foundation and such certification has not been made in the minutes of a meeting as prescribed.¹⁷

Staff recommendation: The contract between the DJJ and the Foundation should be amended to provide for such annual certification to be reported in the official minutes of a meeting of the Foundation. Subsequently, the board of directors must report such annual certification in the official minutes of a meeting of the Foundation.

pursuant to DSO requirements found in s. 20.058, F.S. (described *infra*) is August. E-mail from DJJ staff to staff of the Senate Committee on Criminal Justice, dated August 17, 2017 (on file with the Senate Committee on Criminal Justice). See also IRS Form 990 for the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Committee on Criminal Justice).

¹² Section 985.672(2)(a), F.S.

¹³ Contract between the Florida Department of Juvenile Justice and the Florida Juvenile Justice Foundation, Inc. (executed June 4, 2009) (on file with the Senate Committee on Criminal Justice).

¹⁴ Section 985.672(2)(b), F.S.

¹⁵ *Supra*, n. 13.

¹⁶ Section 985.672(2)(c), F.S.

¹⁷ *Supra*, n. 13. Board meeting minutes of the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Committee on Criminal Justice).

Reversion of Moneys and Property

The contract must provide for the reversion of moneys and property held in trust by the DSO for the benefit of the juvenile justice system to the state if the DJJ ceases to exist or to the DJJ if the DSO is no longer approved to operate for the DJJ, a county commission, or a circuit board or if the DSO ceases to exist.¹⁸

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such reversion of moneys and property.¹⁹

Fiscal Year of the DSO

The contract must provide for the fiscal year of the DSO to begin July 1 of each year and end June 30 of the following year.²⁰

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such information.²¹

Disclosure Made to Donors

The contract must provide for the disclosure of material provisions of the contract, and the distinction between the DJJ and the DSO, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.²²

Staff findings: Compliance. The contract provides that the Foundation must distinguish itself as “the 501(c)(3) direct-support organization for the Florida Department of Juvenile Justice” to all donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications. The contract further provides for the disclosure of material provisions of the contract to donors of gifts, contributions, or bequests.²³

Board of Directors

Section 985.672(3), F.S., requires the Secretary of the DJJ to appoint a board of directors for the DSO. The board’s membership must comprise representatives from businesses, representatives from each of the juvenile justice service districts, and one representative appointed at large.²⁴

Staff findings: Not in compliance. The board’s membership is not in compliance with the statute’s requirements because the juvenile justice system no longer utilizes service districts. Thus, the membership is not made up of representatives from each district.

¹⁸ Section 985.672(2)(d), F.S.

¹⁹ *Supra*, n. 13.

²⁰ Section 985.672(2)(e), F.S.

²¹ *Supra*, n. 13.

²² Section 985.672(2)(f), F.S.

²³ *Supra*, n. 13.

²⁴ Section 985.672(3), F.S.

Staff recommendation: Section 985.672(3), F.S., should be amended to reflect the current organization of the DJJ in order for the board membership to comply. Alternatively, the statute could be amended to provide the DJJ with broad discretion to appoint members to the board, without regard to specific representation as the statute currently prescribes.

Use of Property

Section 985.672(4), F.S., provides that the DJJ may permit, without charge, appropriate use by the DSO of fixed property, facilities, and personnel services of the juvenile justice system. The DJJ may prescribe any condition with which the DSO must comply in order to use such fixed property or facilities of the juvenile justice system. The DJJ may not permit the use of any fixed property or facilities of the juvenile justice system by the DSO if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. The DJJ must adopt rules prescribing the procedures by which the DSO is governed and any conditions with which a DSO must comply to use property or facilities of the DJJ.²⁵

Staff findings: Compliance. The contract between the DJJ and the Foundation provides permission for the Foundation's use of the DJJ's property, facilities, and personnel services. However, the contract is silent on prohibiting the Foundation's use of the DJJ's property and facilities if the Foundation does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.²⁶ Further, the DJJ adopted rules prescribing the conditions in which the Foundation may use the DJJ's property, facilities, and personnel services.²⁷

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include language that prohibits the Foundation's use of the DJJ's fixed property or facilities if the Foundation does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. This language is not required to be in the contract, but its inclusion would enable the DJJ and the Foundation to be in compliance with s. 985.672(4)(b), F.S., because it would apply broadly to the required practices of the Foundation.

Deposit of Funds

Section 985.672(5), F.S., provides that money may be held in a separate depository account in the name of the DSO and subject to the provisions of the contract with the DJJ.²⁸

²⁵ Section 985.672(4)(a)-(c), F.S.

²⁶ *Supra*, n. 13.

²⁷ Fla. Admin. Code R. 63J-1.002 (2007).

²⁸ Section 985.672(5), F.S.

Staff findings: Not in compliance. The Foundation has a separate depository account in their name.²⁹ However, the contract between the DJJ and the Foundation does not include any provisions regarding the separate depository account.³⁰

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include provisions addressing the separate depository account.

Annual Financial Audit

Section 985.672(6), F.S., requires the DSO to provide for an annual financial audit in accordance with s. 215.981, F.S.

Staff findings: Not currently applicable. Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.³¹ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.³²

The Foundation does not have annual expenditures in excess of \$100,000.³³ Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.³⁴

Staff Review of Compliance with s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements)

Section 20.058, F.S., establishes a comprehensive set of transparency and reporting requirements for CSOs and DSOs.

Reporting Requirements

Section 20.058(1), F.S., requires each CSO and DSO to annually submit, by August 1, the following information to the agency it supports:

- The CSO or DSO's name, mailing address, telephone number, and website address;

²⁹ E-mail from DJJ staff to staff of the Senate Committee on Criminal Justice, dated January 16, 2017 (on file with the Senate Committee on Criminal Justice).

³⁰ *Supra*, n. 13.

³¹ The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Section 215.981(1), F.S. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services. Section 215.981(2), F.S.

³² Section 11.45(3)(d), F.S.

³³ Total expenditures for 2015-16 were \$97,254. IRS Form 990 for Florida Juvenile Justice Foundation, Inc. (on file with the Senate Committee on Criminal Justice).

³⁴ While the Foundation's expenditures do not currently exceed \$100,000 and thus, the Foundation is not currently subjected to an annual financial audit pursuant to s. 215.981, F.S., the contract between the DJJ and the Foundation provides that the Foundation must provide a copy of its annual financial audit to the DJJ. *Supra*, n. 13.

- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission and results obtained by the CSO or DSO;
- A brief description of the CSO or DSO's plans for the next three fiscal years;
- A copy of the CSO or DSO's code of ethics; and
- A copy of the CSO or DSO's most recent Internal Revenue Service (IRS) Form 990.³⁵

Staff findings: Compliance. In 2017, the Foundation reported all of the information required by s. 20.058(1), F.S.³⁶

Transparency of Reported CSO or DSO Information

Section 20.058(2), F.S., provides that each agency receiving information from a CSO or DSO pursuant to s. 20.058(1), F.S., shall make such information available to the public through the agency's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.

Staff findings: Compliance. The information required in s. 20.058(1), F.S., is available to the public through the DJJ's website.³⁷ Additionally, the DJJ provides a link to the Foundation's website.³⁸

Section 20.058(3), F.S., provides that, by August 15 of each year, each agency shall report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by each CSO and DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate or modify the agency's association with each organization.

Staff findings: Compliance. The DJJ submitted its report by August 15, 2017, and the DJJ Secretary Daly expressed her strong recommendation for the continued collaboration and association between the DJJ and the Foundation. The letter explained that the DJJ and the Foundation share a long history of working together to improve the lives of at-risk children and their families. The Foundation promotes delinquency prevention, intervention, and educational opportunities for youth, in addition to stewarding all funds raised to enhance the activities of the DJJ. "The Foundation is an integral part of the Department of Juvenile Justice and shares a long and collaborative relationship that is rare amongst direct-support organizations."³⁹

³⁵ The IRS Form 990 is the an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. s. 501. The most recent Form 990 provided by the Foundation is from 2015-16 because the deadline for the form is September, while the deadline for the submission of the required information is August.

³⁶ Transmittal letter dated August 1, 2017, from Foundation Executive Director Caroline Ray to the DJJ Secretary Christina K. Daly, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF> (last visited January 16, 2018).

³⁷ *Supra*, n. 10.

³⁸ Florida Department of Juvenile Justice, "Get Involved" available at <http://www.djj.state.fl.us/fjjf/foundation> (last visited January 16, 2018).

³⁹ *Supra*, n. 10.

Contract Requirements

Section 20.058(4), F.S., provides that any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting information pursuant to s. 20.058(1) and (2), F.S. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head shall terminate any contract between the agency and the organization.

Staff findings: Not in compliance. The contract between the DJJ and the Foundation is not contingent upon the Foundation's submission and posting of the information pursuant to s. 20.058(1) and (2), F.S. The contract also does not provide for the orderly cessation of operations and reversion to the state of state funds held in trust by the Foundation *within 30 days* after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. The contract also does not provide for the DJJ Secretary to terminate the contract between the DJJ and the Foundation in the event that the Foundation fails to submit the required information for two consecutive years.⁴⁰

Staff recommendation: The DJJ and the Foundation should execute a revised contract that includes the requirements prescribed by s. 20.058(4), F.S. The contract between the DJJ and the Foundation was executed in 2009, while s. 20.058, F.S., was enacted by the Legislature in 2014.⁴¹ Additionally, the contract provides that, "The parties agree to renegotiate this agreement and any affected agreements if revisions of any applicable laws or regulations make changes in this agreement necessary."⁴²

Staff Review of Compliance with s. 215.981, F.S. (CSO/DSO Audit Requirements)

As previously noted, s. 215.981(1), F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records. (For a full description of the statute, see discussion, *supra*, of s. 985.672(6), F.S. (annual financial audit)).

Staff findings: Not currently applicable. As previously noted, the Foundation does not have annual expenditures in excess of \$100,000. Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.⁴³

Staff Review of Compliance with s. 112.3251, F.S. (CSO/DSO Ethics Code Requirement)

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.⁴⁴ A CSO or DSO may adopt additional or more

⁴⁰ *Supra*, n. 13.

⁴¹ Section 20.058, F.S., was created in 2014 by ch. 2014-96, L.O.F.

⁴² *Supra*, n. 13.

⁴³ *Supra*, n. 33.

⁴⁴ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.⁴⁵

Staff findings: Not in compliance. The Foundation has a code of ethics which is conspicuously posted on its website.⁴⁶ However, the Foundation's code of ethics is not in compliance with s. 112.313(2), (4), (5), and (8), F.S.

Staff recommendation: The Foundation should adopt a revised code of ethics to include requirements prescribed by s. 112.3251, F.S.

III. Effect of Proposed Changes:

The bill reenacts statutory authority (s. 985.672, F.S.) for the DJJ to establish a direct-support organization to provide assistance, funding, and support to assist the DJJ in furthering its goals.

The bill removes a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted.

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:

By saving the Foundation from repeal, the bill sustains a source of financial and other direct assistance for advancing the DJJ's mission to increase public safety by reducing juvenile delinquency.

⁴⁵ Section 112.3251, F.S.

⁴⁶ Florida Juvenile Justice Foundation, *2017 Annual Report*, available at <http://www.djj.state.fl.us/fjif/resources> (last visited January 16, 2018).

C. Government Sector Impact:

The bill has no fiscal impact on state government. By saving s. 985.672, F.S., from repeal, the DSO may continue to provide assistance, funding, and support for activities authorized by the DJJ. If s. 985.672, F.S., is not saved from repeal, the DJJ may need to assume the responsibilities of the DSO or find another entity to assume those responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 985.672 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.