

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: CS/SB 618

INTRODUCER: Criminal Justice Committee and Senator Powell

SUBJECT: Detention of Children

DATE: February 11, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Fav/CS
2.			JU	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 618 amends s. 985.265, F.S., providing that a child who is treated as an adult for purposes of prosecution in criminal court may not be housed in a jail or other facility intended for the detention of adults unless the court holds a hearing and makes written findings, based on specified criteria, that it is in the interest of justice to transfer the child to an adult facility.

The bill requires the court to hold a hearing every 30 days, or 45 days in a rural jurisdiction, to review whether it is in the continued interest of justice to hold the child in an adult facility. A child is prohibited from being held in an adult facility longer than 180 days, unless the court makes a written finding of good cause for an extension, or the child expressly waives the 180 day limit.

Additionally, this bill brings Florida law regarding the detention of children in compliance with the Juvenile Justice and Delinquency Prevention Act (JJDP). The JJDP was first authorized in 1974, to ensure states and territories meet certain common standards for the treatment of children in the juvenile justice system. States must comply with the JJDP to be eligible for federal grant funds. The JJDP was amended in December 2018, to provide new standards for housing children charged as adults in an adult jail or other secure adult facilities.

The bill may have an indeterminate fiscal impact on the DJJ and courts. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Juvenile Justice Reform Act

The JJDP Act was first authorized in 1974, to ensure states and territories meet certain common standards for the treatment of children in the juvenile justice system.¹ The JJDP Act establishes the following four core protections for children involved in the juvenile justice system, which states must comply with to be eligible for grant funds under the JJDP Act:

- A prohibition against incarcerating children charged with a status offense;
- Requiring children to have sight and sound separation from adult inmates;
- A prohibition against housing children in adult facilities while they await a trial; and
- Requiring states to address disproportionate minority contact.²

The JJDP Act was last reauthorized in 2002, and expired in 2007. In 2018, the U.S. Congress made major changes to the JJDP Act regarding:

- Racial and Ethnic Disparities.
- Sight and Sound/Jail Removal.
- Deincarceration of Status Offenses.³

By December 21, 2021, children who are charged and tried as adults, may not have sight or sound contact with adults, and may not be detained in a jail or adult facility, unless a court finds that such detention is in the interest of justice. In determining whether detention in an adult facility is in the interest of justice, the court must hold a hearing, and make written findings after taking into consideration the child's:

- Age.
- Mental and physical maturity.
- Present mental state.
- History of delinquency.⁴

Detention of Children in Florida

A child is entitled to a hearing within 24 hours of being taken into custody or placed in detention care. At the hearing, the court may order continued detention care under certain circumstances.⁵ "Detention care" means "the temporary care of a child in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order."⁶ There are two types of detention care, including:

¹ The Coalition for Juvenile Justice and the National Criminal Justice Association, *Summary of the Juvenile Justice Reform Act of 2018*, p.1, available at <http://www.juvjustice.org/sites/default/files/resource-files/Summary%20of%20the%20Juvenile%20Justice%20Reform%20Act%20of%202018.pdf> (last visited February 5, 2020).

² Id.

³ Id.

⁴ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *OJJDP Fact Sheet* p.3 (June 2019), available at <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/252961.pdf> (last visited February 5, 2020).

⁵ Section 985.255(1), F.S.

⁶ Section 985.03(18), F.S.

- “Secure detention” which is the temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- “Supervised release detention” which is the temporary, nonsecure custody of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.⁷

Generally, a child may not be held in detention care for more than 21 days, unless an adjudicatory hearing for the case has been commenced in good faith by the court. The court may extend the length of detention for an additional 9 days if the child is charged with certain offenses, and there is good cause shown that the nature of the charge requires additional time for the prosecution or defense of the case. Additionally, a prolific juvenile⁸ offender must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.⁹

Children Transferred to Adult Facilities

Section 985.265(5), F.S., provides when a child may be held in a jail or other adult facility. Children must be housed separately from adult inmates to prohibit regular contact¹⁰ with incarcerated adults. A child must be transferred to an adult jail or other adult facility when he or she:

- Has been transferred or indicted for criminal prosecution as an adult.
 - Except when the child is charged with only a misdemeanor and is being transferred to adult court pursuant to the waiver or direct file process, in which case he or she may not be held in an adult facility, but may be held temporarily in a juvenile detention facility.
 - Is wanted by another jurisdiction for prosecution as an adult.¹¹

Currently, Florida’s provisions regarding the transfer of children to jails or other adult facilities are not in compliance with the most recent reenactment of the JJDPA. Florida must be in compliance by December 21, 2021, or risk a reduction in funding.¹²

Cost Sharing of Detention Care

Cost sharing is governed by s. 985.6865, F.S., which provides, notwithstanding s. 985.686, F.S., each fiscal year, every county that is not fiscally constrained¹³ and that has dismissed any action

⁷ Id.

⁸ Section 985.255, F.S., provides that a “prolific juvenile offender” means a child that is charged with a delinquent act that would be a felony if committed by an adult, has a prior adjudication or adjudication withheld for a delinquent act that would be a felony if committed by an adult, and has 5 or more arrests, adjudications, or adjudications withheld, 3 of which must have been felony offenses.

⁹ Section 985.26, F.S.

¹⁰ Section 985.265(5)(b), F.S., defines “regular contact” as sight and sound contact.

¹¹ Section 985.265(5), F.S.

¹² Office of Juvenile Justice and Delinquency Prevention, *OJJDP Fact Sheet* p.3 (June 2019), available at <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/252961.pdf> (last visited February 5, 2020).

¹³ Section 985.6865(3)(b), F.S., defines “fiscally constrained county” as 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

or claim described in s. 985.6865(2), F.S.,¹⁴ must pay 50 percent of the total shared detention cost.¹⁵

The Department of Juvenile Justice (DJJ) calculates a county's annual percentage share by dividing the total number of detention days for children residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for children in all non-fiscally constrained counties. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.¹⁶

Counties that are required to pay their share of detention costs must incorporate sufficient funds to pay its share of detention costs into its annual budget.¹⁷ Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.¹⁸ The DJJ will determine quarterly whether counties are complying with this section.¹⁹

The State must pay all costs of detention care for children:

- Residing in a fiscally constrained county.
- Residing out of State.
- Housed in state detention centers from counties that provide their own detention care for children.²⁰

III. Effect of Proposed Changes:

This bill amends s. 985.265, F.S., providing that a child who is treated as an adult for purposes of prosecution in criminal court may not be housed in a jail or other facility intended for the detention of adults unless the court holds a hearing and makes written findings. In determining whether it is in the interest of justice to allow a child to be held in a jail or adult facility, the court must consider:

- The age of the child.
- The physical and mental maturity of the child.
- The present mental state of the child, including whether the child presents an imminent risk of harm to himself or herself.
- The nature and circumstances of the alleged offense.
- The relative ability of the available adult and child detention facilities to not only meet the specific needs of the child but also to protect the safety of the public as well as other children detained in facilities.
- Any other relevant factor.

\$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.

¹⁴ Various counties and the DJJ have engaged in a multitude of legal proceedings, including administrative or judicial claims, regarding detention cost sharing for juveniles. Such litigation has largely focused on how the DJJ calculates the detention costs that the counties are responsible for paying, leading to the overbilling of counties for a period of years. Sections 985.6865(1) and (2), F.S.

¹⁵ Section 985.6865(4), F.S.

¹⁶ Id.

¹⁷ Section 985.6865(6), F.S.

¹⁸ Section 985.6865(7), F.S.

¹⁹ Section 985.6865(8), F.S.

²⁰ Section 985.6865(5), F.S.

The bill requires the court to hold a hearing every 30 days, or 45 days in a rural jurisdiction, to review whether it is in the continued interest of justice to hold the child in an adult facility. A child is prohibited from being held in an adult facility longer than 180 days, unless the court makes a written finding of good cause for an extension, or the child expressly waives the 180 day limit.

The bill is silent on how a child may be detained if the court does not find it in the interest of justice to transfer a child charged as an adult to a jail or other adult facility. Section 985.26, F.S., as discussed above in Section II, Present Situation, governs the length of detention of children. A child who is charged as an adult and who is not transferred to a jail or other adult facility will likely be subject to the laws governing the detention of children in ch. 985, F.S.

This bill brings Florida law regarding the detention of children in compliance with the JJDP.A.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill relates to the housing of children who have been transferred or indicted for criminal prosecution as an adult, and criminal laws are exempt from the requirements of Article VII, Section 18 of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DJJ has indicated that this bill will have an indeterminate fiscal impact.²¹ As previously stated, the bill is silent on how a child may be detained if the court does not find it in the interest of justice to transfer a child charged as an adult to a jail or other adult facility. The DJJ predicts that the majority of children awaiting trial in adult court will be held in its juvenile detention facilities. However, there is nothing in the bill or statute that authorizes the DJJ to hold these children in detention indefinitely, thus s. 985.26, F.S., would likely control.²²

In FY 2018-19, 861 children were transferred to adult court and based on these numbers the DJJ is estimating that the cost to implement this bill is \$35,829,542 and an additional 447 FTEs.²³

According to the DJJ, a child transferred to adult court awaits trial for an average of 284 days. Housing 861 children for 284 days will increase the number of detention services days by 244,524. The DJJ estimates the need for 447 additional FTE, including 417 detention officers (\$17,170,541), detention officer supervisors (\$2,631,622), 27 food support workers (\$1,018,304), and 3 operations coordinators (\$179,378).²⁴

Using the variable detention cost of \$54.98, which is comprised of food, medical, laundry, and expenses, the DJJ predicts that housing 861 children would cost \$13,443,930. The DJJ estimates a cost of \$1,254,770 non-recurring transportation cost, and \$130,998 recurring cost for gas, maintenance, and repairs.²⁵

The cost would be shared by the counties in accordance with detention cost share, pursuant to s. 985.6865, F.S.

The bill may also have an indeterminate fiscal impact on the courts due to the requirement that the court hold a hearing every 30 days, or 45 days in rural areas, to determine whether it is in the continued interest of justice to detain the child in a jail or other adult facility.

VI. Technical Deficiencies:

The term “rural” on Line 51 may need clarification, or an appropriate cross reference to define the term.

²¹ Department of Juvenile Justice, 2020 Agency Analysis, February 7, 2020 (on file with the Senate Criminal Justice Committee).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

The bill is silent on how a child may be detained if the court does not find it in the interest of justice to transfer a child charged as an adult to a jail or other adult facility. A child who is charged as an adult and who is not transferred to a jail or other adult facility will likely be subject to the laws governing the detention of children in ch. 985, F.S. Clarification on this issue may be necessary.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 985.265 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 February 11, 2020:

The committee substitute changes the effective date to July 1, 2021.

- B. **Amendments:**

None.