

**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 Appropriations

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BILL: CS/SB 1166

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Juvenile Justice

DATE: April 14, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	<b>Fav/CS</b>
2.	Forbes	Harkness	ACJ	<b>Recommend: Fav/CS</b>
3.	Forbes	Sadberry	AP	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1166 amends section 20.316, Florida Statutes, to retain the creation of a new program entitled “Accountability and Program Support” and the revision of the name of an existing program, “Prevention and Victim Services” to “Prevention Services” within the Department of Juvenile Justice (DJJ).

This bill amends section 985.101, Florida Statutes, to revise the circumstances under which a child may be taken into custody for a failure to appear by requiring the court to consider whether the child’s nonappearance was willful based on certain factors.

This bill amends section 985.435, Florida Statutes, to require each judicial circuit to jointly develop a plan specifying the alternative consequence component for when a child violates probation.

This bill amends section 985.6865, Florida Statutes, to ensure that only a county that is not fiscally constrained and that does not provide for its own detention care contributes 50 percent of the detention cost.

The DJJ indicates that there will be an indeterminate positive fiscal impact. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2021.

## II. Present Situation:

The DJJ has traditionally managed juveniles under a rehabilitative model of justice.<sup>1</sup> The mission of the DJJ 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.<sup>2</sup> The secretary of the DJJ is appointed by the Governor and tasked with carrying out programs to help achieve this mission.

### Programs within the Department of Juvenile Justice

Section 20.316, F.S., establishes six programs within the DJJ. The secretary of the DJJ appoints an assistant secretary to oversee these programs. The following DJJ programs have been established by law:

- Accountability and Program Support (OAPS). The OAPS emphasizes the DJJ's commitment to ensuring programs operated or contracted by the DJJ effectively provide for the safety, well-being, and treatment of youth under the state's care.<sup>3</sup>
- Administration. The Office of Administrative Services is responsible for providing services to department staff, including but not limited to, financial, computer information systems, personnel, and general services.<sup>4, 5</sup>
- Intake and Detention. Detention is the custody status for youth that are held pursuant to a court order or after being taken into custody for a violation of the law. The DJJ operates 21 secure detention centers in 21 counties.<sup>6</sup>
- Prevention. The Prevention program offers voluntary youth crime prevention programs throughout the state.<sup>7</sup>
- Probation and Community Corrections. When a youth is charged with a crime they may be referred to diversion, court ordered sanctions, or probation. Each youth is assigned a probation officer who monitors compliance and helps the youth connect with service providers.<sup>8</sup>
- Residential and Correctional Facilities. The Office of Residential Services oversees the Department's development, maintenance, and management of facilities and programs that meet the needs of Florida's adjudicated delinquent youths and promote public safety.<sup>9</sup>

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<sup>1</sup> Learn about the History of the Juvenile Justice System in Florida, *The Department of Juvenile Justice*, available at <http://www.djj.state.fl.us/about-us/history> (last visited March 5, 2021).

<sup>2</sup> Learn about the Vision, Mission and Guiding Principles of the Department of Juvenile Justice, *The Department of Juvenile Justice*, available at <http://www.djj.state.fl.us/about-us/mission> (last visited March 5, 2021).

<sup>3</sup> DJJ, Office of Accountability and Program Support, *The Department of Juvenile Justice*, available at <http://www.djj.state.fl.us/services/support/OPA> (last visited March 5, 2021).

<sup>4</sup> DJJ, Office of Administrative Services, *The Department of Juvenile Justice*, available at <http://www.djj.state.fl.us/services/support/administration> (last visited March 5, 2021).

<sup>5</sup> Section 20.316(2), F.S.

<sup>6</sup> DJJ, Detention Services, *The Department of Juvenile Justice*, available at <http://www.djj.state.fl.us/services/detention> (last visited March 5, 2021).

<sup>7</sup> DJJ, Prevention Services, *The Department of Juvenile Justice*, available at <http://www.djj.state.fl.us/services/prevention> (last visited March 5, 2021).

<sup>8</sup> DJJ, Probation & Community Intervention, *The Department of Juvenile Justice*, available at <http://www.djj.state.fl.us/services/probation> (last visited March 5, 2021).

<sup>9</sup> DJJ, Residential Services, *The Department of Juvenile Justice*, available at <http://www.djj.state.fl.us/services/residential> (last visited March 5, 2021).

In order to carry out his or her duties, the secretary assigns an assistant secretary to administer each program. The OAPS emphasizes the DJJ's commitment to ensuring programs operated or contracted by the DJJ effectively provide for the safety, well-being, and treatment of youth under the state's care.<sup>10</sup>

The implementing bill for the General Appropriations Act for FY 2020-21 created the program of the OAPS in s. 20.316, F.S. This allowed the secretary to appoint an assistant secretary to oversee the OAPS. Section 65 of the implementing bill, which provided the changes to s. 20.316, F.S., will expire on July 1, 2021, and revert back to what it was on June 30, 2020.<sup>11,12</sup> Without such a change, the DJJ will no longer have the OAPS and the Prevention program will revert back to Prevention and Victim Services.

The secretary of the DJJ is responsible for planning, coordinating, and managing the delivery of all programs and services within the DJJ.<sup>13</sup> The secretary has many duties, including but not limited to:

- Ensuring that programs and services are implemented according to legislative intent; state and federal laws, rules, and regulations; statewide program standards; and performance objectives by reviewing and monitoring regional and circuit program operations and providing technical assistance to those programs.
- Identifying the need for and recommending the funding and implementation of an appropriate mix of programs and services, including prevention, diversion, nonresidential and residential commitment programs, training schools, and conditional release programs and services, with an overlay of educational, vocational, alcohol, drug abuse, and mental health services, where appropriate.
- Establishing program policies and rules and ensuring that those policies and rules encourage cooperation, collaboration, and information sharing with community partners in the juvenile justice system to the extent authorized by law.<sup>14</sup>

### **Detention of Children in Florida**

A child may only be taken into custody of the DJJ under certain circumstances. A child may be taken into custody:

- Pursuant to an order of the circuit court issued under ch. 985, F.S., based on sworn testimony, either before or after a petition is filed;
- For a delinquent act or violation of law;
- By a law enforcement officer for failing to appear at a court hearing after being properly noticed; or
- By a law enforcement officer who has probable cause to believe that the child is in violation of the child's probation, supervised release detention, postcommitment probation, or

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<sup>10</sup> Office of Accountability and Program Support, *The Department of Juvenile Justice*, available at <http://www.djj.state.fl.us/services/support/OPA> (last visited March 5, 2021).

<sup>11</sup> Chapter 2020-114 s. 64, Laws of Fla.

<sup>12</sup> Section 20.316, F.S. (2019), established 5 programs within the DJJ. The following DJJ programs have been established by this section: Prevention and Victim Services; Intake and Detention; Residential and Correctional Facilities; Probation and Community Corrections; and Administration.

<sup>13</sup> Section 20.316(1)(a) and (b), F.S.

<sup>14</sup> Section 20.316(1), F.S.

conditional release supervision; has absconded from nonresidential commitment; or has escaped from residential commitment.<sup>15</sup>

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 if:

- The result of the risk assessment instrument pursuant to s. 985.245, F.S., indicates secure or supervised release detention.
- The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- The child is detained on a judicial order for failure to appear, after proper notice:
  - For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
  - At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.<sup>16</sup>

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing for any of the above reasons. A child's failure to keep the clerk of court and defense counsel informed of a current mailing address is not an adequate excuse for the child's failure to appear.<sup>17</sup>

“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.”<sup>18</sup> There are two types of detention care, including:

- “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.<sup>19</sup>

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 nine 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 juvenile<sup>20</sup> offender must be placed

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<sup>15</sup> Section 985.101(1)(a)-(d), F.S.

<sup>16</sup> Section 985.255(1), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 985.03(18), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> 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

on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.<sup>21</sup>

### ***Juvenile Detention Cost Sharing***

Detention cost sharing was previously governed by s. 985.686, F.S., and provided that non-fiscally constrained counties were responsible to pay all the costs of providing preadjudicatory detention care, exclusive of the costs of any nonmedical educational or therapeutic services. Section 985.686, F.S., required the state to pay all detention care costs of fiscally constrained counties.<sup>22</sup> This cost-sharing methodology led to litigation between counties and the DJJ.

In 2016, as a response to the litigation on cost-sharing, the Legislature passed s. 985.6865, F.S., creating a new cost sharing methodology. The passage of s. 985.6865, F.S., has rendered s. 985.686, F.S., obsolete.

Section 985.6865, F.S., provides that, notwithstanding s. 985.686, F.S., each fiscal year, every county that is not fiscally constrained<sup>23</sup> and that has dismissed any action or claim described in s. 985.6865(2), F.S.,<sup>24</sup> must pay 50 percent of the total shared detention cost.<sup>25</sup>

The DJJ calculates a county's annual percentage share by dividing the total number of detention days for juveniles residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for juveniles 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.<sup>26</sup>

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.<sup>27</sup> Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.<sup>28</sup> The DJJ will determine quarterly whether counties are complying with this section.<sup>29</sup>

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

- Residing in a fiscally constrained county;

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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.

<sup>21</sup> Section 985.26, F.S.

<sup>22</sup> Section 985.686(3) and (4), F.S.

<sup>23</sup> 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 \$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.

<sup>24</sup> 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.

Section 985.6865(1) and (2), F.S.

<sup>25</sup> Section 985.6865(4), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Section 985.6865(6), F.S.

<sup>28</sup> Section 985.6865(7), F.S.

<sup>29</sup> Section 985.6865(8), F.S.

- Residing out of State; or
- Housed in state detention centers from counties that provide their own detention care for juveniles.<sup>30</sup>

Section 985.6865, F.S., also contains language that refers back to past litigation arising from s. 985.686, F.S. This language is outdated and has become obsolete.

### **Violation of Probation**

After a child is found to have committed a delinquent act, the court must hold a disposition hearing.<sup>31</sup> At the disposition hearing, the court must determine whether the child will be committed to the DJJ or receive community based sanctions. If the court determines not to commit the child to the DJJ, the court must determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are not limited to:

- Participation in substance abuse treatment.
- A day-treatment probation program.
- Restitution in money or in kind.
- A curfew.
- Revocation or suspension of the driver license of the child.
- Community service.
- Appropriate educational programs as determined by the district school board.<sup>32</sup>

A probation program for a child adjudicated delinquent must include a penalty component,<sup>33</sup> and a rehabilitative program component.<sup>34</sup> A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new law violations. The alternative consequence component is designed to provide swift and appropriate consequences to any noncompliance with technical conditions of probation. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation must be detailed in the disposition order.<sup>35</sup>

The state attorney or the DJJ may bring a child before the court on a petition alleging a violation of probation if sanctions are sought.<sup>36</sup> A child taken into custody on an alleged violation of probation must be screened and either detained or released based on his or her risk assessment instrument score.<sup>37</sup> If the child admits to the violation, or the court finds that the child has violated his or her probation, the court must enter a new disposition order. The court may impose

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<sup>30</sup> Section 985.6865(5), F.S.

<sup>31</sup> Section 985.433, F.S.

<sup>32</sup> Section 985.433(8), F.S.

<sup>33</sup> Section 985.435(2), F.S., provides a penalty component that may include restitution, community service, a curfew, revocation or suspension of the driver license, or other nonresidential punishment appropriate to the offense.

<sup>34</sup> Section 985.435(3), F.S., provides a rehabilitative component that may include a substance abuse treatment program, or a school or career and technical education program.

<sup>35</sup> Section 985.435(4), F.S.

<sup>36</sup> Section 985.439(1)(b), F.S.

<sup>37</sup> Section 985.439(2), F.S.

any sanction that the court could have imposed at the original disposition hearing.<sup>38</sup> The court may:

- Place the child in supervised release detention with electronic monitoring.
- If the violation of probation is technical in nature and not a new law violation, place the child in an alternative consequence program designed to provide swift and appropriate consequences to any further violations of probation.
  - Alternative consequence programs must be established, within existing resources, at the local level in coordination with law enforcement agencies, the chief judge of the circuit, the state attorney, and the public defender.
  - Alternative consequence programs may be operated by an entity such as a law enforcement agency, the DJJ, a juvenile assessment center, a county or municipality, or another entity selected by the DJJ.
  - Upon placing a child in an alternative consequence program, the court must approve specific consequences for specific violations of the conditions of probation.
- Modify or continue the child’s probation program.
- Revoke probation and commit the child to the DJJ.<sup>39</sup>

Additionally, the court may order the child submit to random testing to detect the use of alcohol or controlled substances at the time of disposition.<sup>40</sup>

### III. Effect of Proposed Changes:

This bill amends s. 20.316, F.S., to retain the program entitled “Accountability and Program Support” within the Department of Juvenile Justice (DJJ). This program was created in statute by the implementing bill for the General Appropriations Act for FY 2020-21.<sup>41</sup> This change will also allow the secretary to keep the assistant secretary that was appointed for the program. The bill also retains the change made to s. 20.316, F.S., by the implementing bill for the General Appropriations Act for FY 2020-21, that revised the name of the existing program, “Prevention and Victim Services,” to “Prevention Services.”<sup>42</sup> This change is because the DJJ has not provided victim services for numerous years.

This bill amends s. 985.101, F.S., providing a court may order that a child be taken into custody for a failure to appear. Before the court issues such an order, it must consider all of the following information relating to whether the child’s nonappearance was willful:

- Whether notice was sent to the address in the official court record.
- Whether notice was given to the child in any format by anyone.
- Whether counsel, if any, for the child had contact or attempted to have contact with the child.
- Whether a DJJ representative had contact or attempted to have contact with the child.
- Whether the DJJ has any specific information to assist the court in this decision.

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<sup>38</sup> Section 985.439(4), F.S.

<sup>39</sup> Section 985.439(4)(a)-(d), F.S.

<sup>40</sup> Section 985.439(5), F.S.

<sup>41</sup> Chapter 2020-114 s. 64, Laws of Fla.

<sup>42</sup> *Id.*

This bill amends s. 985.435, F.S., providing that each judicial circuit must develop a written plan specifying the alternative consequence component. These plans must be based upon the principle that sanctions must reflect:

- The seriousness of the violation.
- The assessed criminogenic needs and risks of the child.
- The child's age and maturity level.
- How effective the sanction or incentive will be in moving the child to compliant behavior.

The plan must be made in consultation with the judges, the state attorney, the public defender, the relevant law enforcement agency in the judicial circuit, and the DJJ.

This bill also amends s. 985.6865, F.S., to ensure that only a county that is not fiscally constrained and that does not provide for its own detention care contributes 50 percent of the detention cost. This bill also removes language related to detention cost-sharing that is no longer relevant.

This bill repeals s. 985.686, F.S. Section 985.686, F.S., formerly provided for a detention cost sharing plan between the DJJ and counties. This cost sharing plan is now governed by s. 985.6865, F.S.

Additionally, for purposes of incorporating the amendments made by this act, this bill reenacts ss. 960.001, 985.439, and 985.565, F.S.

This bill is effective July 1, 2021.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

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 indicates this bill will have an indeterminate cost savings. The bill will likely decrease the number of youth held in secure detention for a failure to appear or violation of probation, therefore providing a cost savings for the state and the counties (who share in the cost of detention).<sup>43</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.316, 985.101, 985.435, and 985.6865.

This bill repeals section 985.686 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 960.001, 985.439, and 985.565.

**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 March 9, 2021:**

The committee substitute:

- Amends s. 985.101, F.S., providing that a court may take a child into custody for failing to appear. Prior to issuing such order, the court must consider specified criteria to determine the child's nonappearance was willful.

<sup>43</sup> Department of Juvenile Justice, *2021 Agency Analysis of SB 1166* (February 22, 2021). On file with the Senate Committee on Criminal Justice.

- Amends s. 985.435, F.S., to provide that each circuit must develop, in consultation with judges, the state attorney, the public defender, relevant law enforcement agencies, and the DJJ, a written plan specifying the alternative sanctions and incentives for noncompliance with probation.
- Reenacts various statutes.

**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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