

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 807 Detention of Children
SPONSOR(S): Bush
TIED BILLS: **IDEN./SIM. BILLS:** SB 636

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Mathews	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Juvenile Justice and Delinquency Prevention Act (Act) was first authorized in 1974, to ensure states and territories meet certain common standards for the treatment of youths in the juvenile justice system. The Act establishes four core protections for youths involved in the juvenile justice system, which states must comply with to be eligible for federal grant funds. The Act was reenacted in December 2018, to provide new standards for housing juveniles charged as adults in an adult jail or other secure adult facility.

Florida currently requires a court to order a juvenile to be transferred to an adult jail or other adult facility when he or she:

- Has been transferred or indicted as an adult.
 - Unless he or she is charged with 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.

While Florida's current requirements for housing juveniles charged as adults comply with previous versions of the Act, the changes under its recent reenactment place Florida at risk of noncompliance with the Act's core provisions, which may affect federal funding and grant eligibility.

HB 807 amends s. 985.265, F.S., to bring Florida's juvenile detention care provisions into compliance with the Act by requiring a court to hold a hearing and make written findings regarding housing a juvenile in an adult facility. The bill provides that if a juvenile is being treated as an adult and he or she is housed in a secure facility, the court may not order a transfer to an adult facility unless it finds such a transfer is in the interest of justice, after considering the following factors:

- The juvenile's age, physical and mental maturity, present mental state, and prior delinquency;
- The nature and circumstances of charges;
- The ability of the available adult and juvenile facilities to meet the child's needs, protect the public, and protect other detained juveniles; and
- Any other relevant factor.

The bill requires the court to hold a hearing at least every 30 days, or 45 days in a rural jurisdiction, to review whether it is still in the interest of justice to hold the juvenile in an adult facility. The bill prohibits a child from being held in an adult facility longer than 180 days, without written findings by the court of good cause for an extension or a juvenile's express waiver of the 180 day limit.

The bill may have an indeterminate but significant impact on state and county detention care costs.

The bill provides an effective date of July 1, 2022.

This bill may be a county or municipality mandate requiring a two-third vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Juvenile Justice Reform Act

The Juvenile Justice and Delinquency Prevention Act (Act) was first authorized in 1974, to ensure states and territories meet certain common standards for the treatment of youths in the juvenile justice system.¹ The Act establishes the following four core protections for youths involved in the juvenile justice system, which states must comply with to be eligible for grant funds under the Act:²

- A prohibition against incarcerating youths charged with a status offense;³
- Requiring youths to have sight and sound separation from adult inmates;⁴
- A prohibition against housing youths in adult facilities while they await a juvenile trial; and
- Requiring states to address disproportionate minority contact.⁵

The Act was last reauthorized in 2002, and expired in 2007, but was reenacted in December 2018. Among other changes to the Act, several core requirements were updated.

Under the reenactment, a youth who violates a valid court order may be held in detention for a status offense, if the court finds that detention is necessary and enters a detention order:

- Identifying the valid court order violated;
- Specifying the factual basis for determining reasonable cause to believe the status offender has violated the order;
- Including findings of fact supporting a determination that there is no appropriate less restrictive alternative to placing the status offender in a detention facility, with due consideration of the best interest of the juvenile;
- Specifying the length of time, not to exceed seven days, that the status offender may remain in a secure detention facility or correctional facility; and
- Including a plan for the juvenile's release from the detention facility.

A second change under the reenactment requires all states, by December 21, 2021, to ensure sight and sound separation and jail removal for a juvenile awaiting trial as an adult.⁶ An exception exists under limited circumstances where a court finds in writing, after a hearing, that it is in the interest of justice to hold the juvenile in an adult facility, after considering the following factors:

- The juvenile's:
 - Age;
 - Physical and mental maturity;
 - Present mental state; and
 - Prior delinquency.
- The nature and circumstances of charges.
- The ability of the available adult and juvenile facilities to:

¹ The Coalition for Juvenile Justice, *Summary of the Juvenile Justice Reform Act of 2018*,

<http://www.juvjustice.org/sites/default/files/resource-files/Summary%20of%20the%20Juvenile%20Justice%20Reform%20Act%20of%202018.pdf> (last visited Apr. 1, 2021).

² Act 4 Juvenile Justice, *Fact Sheet: Jail Removal and Sight & Sound Core Protections*, (Aug. 2014)

<https://act4jj.org/sites/default/files/ckfinder/files/ACT4JJ%20Core%20Protection%20Jail%20Removal%20and%20Sight%20Sound%20Aug%202014%20FINAL.pdf> (last visited Apr. 1, 2021).

³ A status offense is conduct that would not be considered criminal if committed by an adult, such as breaking a curfew or skipping school. S. 985.802(c) and (d), F.S.

⁴ Sight contact means clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact means direct oral communication between incarcerated adults and juvenile offenders. 42 U.S.C. § 5633(a)(13)(A) and (B); Ss. 985.115(3), 985.265(5)(b), and 985.688(11)(c), F.S.

⁵ Meaning states must address the multiple needs of youth at risk for becoming delinquent by addressing the prevalence of disproportionate minority representation in the juvenile justice system. S. 985.17(3)(b), F.S.

⁶ This protection previously applied only to youth being held on juvenile court charges.

- Meet the child’s needs;
- Protect the public; and
- Protect other detained juveniles.
- Any other relevant factor.

If the court determines a transfer to an adult facility is in the interest of justice, it must hold a hearing at least every 30 days, or every 45 days in a rural jurisdiction, to review whether it is still in the interest of justice to hold the juvenile in an adult facility. However, a juvenile may not be held in an adult facility longer than 180 days, without written findings of good cause for an extension, or the juvenile’s express waiver of this limitation.

The final core provision update shifts the previous focus on disproportionate minority contact to a focus on racial and ethnic disparities, and requires states to collect and analyze data to determine the cause of and establish a plan to mitigate racial and ethnic disparities.

Florida Juvenile Detention Care

The Legislature has defined “detention care” to mean “the temporary care of a child in secure, nonsecure, or home detention, pending a court adjudication or disposition or execution of a court order.”⁷ There are two types of detention care, including:

- "Secure detention" meaning 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.⁸
- “Supervised release detention” meaning 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.⁹

Section 985.265(5), F.S., provides the circumstances under which a juvenile may be held in secure detention in an adult jail, and requires such juveniles be housed separately from adult inmates to prohibit regular contact¹⁰ with incarcerated adults. Florida requires a court to order a juvenile to be transferred to an adult jail or other adult facility when he or she:

- Has been transferred or indicted as an adult.
 - Except when the child is charged with 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.¹¹
- Is wanted by another jurisdiction for prosecution as an adult.

While Florida’s current requirements for housing juveniles charged as adults comply with previous versions of the Act, the changes under the recent reenactment place Florida at risk of noncompliance with the Act’s core provisions.

⁷ S. 985.03(18), F.S.

⁸ S. 985.03(18)(a), F.S.

⁹ S. 985.03(18)(b), F.S.

¹⁰ “Regular contact” means sight and sound contact. S. 985.265(5)(b), F.S.

¹¹ S. 985.265(5)(a), F.S.

Detention Cost-Sharing

In Florida, secure detention care costs for juveniles is determined by county, and may be the responsibility of the county alone or may be paid for in-part or entirely by the State. The State must pay all detention care costs for a juvenile:¹²

- Residing in a fiscally constrained county;¹³
- Residing outside of Florida; or
- Who is housed in a state-run detention center, but is from a county that provides its own juvenile detention care.

The State is currently required to share detention care costs with non-fiscally constrained counties operating in cooperation with DJJ based on each county's annual percentage share of total shared detention costs. A non-fiscally constrained county's annual percentage share is calculated by dividing the total number of detention days for juveniles residing in the county for the most recent 12-month period by the total number of detention days for juveniles in all non-fiscally constrained counties during the same period. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.¹⁴ A county required to pay a share of detention costs must incorporate funds to pay shared detention costs into the county's annual budget.¹⁵ Funds DJJ receives from cost-sharing must be deposited into the Shared County/State Juvenile Detention Trust Fund,¹⁶ and DJJ must determine quarterly whether each county is complying with cost-sharing requirements.¹⁷

Effect of Proposed Changes

HB 807 amends s. 985.265, F.S., to bring Florida's juvenile detention care provisions into compliance with the Juvenile Justice and Delinquency Prevention Act by requiring a court to hold a hearing and make written findings regarding housing a juvenile in an adult facility.

The bill provides that if a juvenile is being prosecuted as an adult and he or she is housed in a secure facility, the court may not order a transfer to an adult facility unless it finds such a transfer is in the interest of justice, after consideration of the following factors:

- The juvenile's:
 - Age;
 - Physical and mental maturity;
 - Present mental state; and
 - Prior delinquency.
- The nature and circumstances of charges.
- The ability of the available adult and juvenile facilities to:
 - Meet the child's needs;
 - Protect the public; and
 - Protect other detained juveniles.
- Any other relevant factor.

If it determines a transfer to an adult facility is in the interest of justice, the bill requires a court to hold a hearing at least every 30 days, or 45 days in a rural jurisdiction, to review whether it is still in the interest of justice to hold the juvenile in an adult facility. The bill prohibits a child from being held in an adult facility longer than 180 days, without the court making written findings of good cause for an extension or a juvenile's express waiver of the 180 day limit.

The bill provides an effective date of July 1, 2022.

¹² S. 985.6865(5), F.S.

¹³ A "fiscally constrained county" is 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 under s. 1011.62(4)(a)1.a., F.S., from July 1 of the previous year. S. 985.6865(3)(b), F.S.

¹⁴ S. 985.6865(4), F.S.

¹⁵ S. 985.6865(6), F.S.

¹⁶ S. 985.6865(7), F.S.

¹⁷ S. 985.6865(8), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 985.265, F.S., relating to detention transfer and release; education; adult jails.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a significant indeterminate fiscal impact to state government expenditures. DJJ indicates that the bill is unclear on whether youth transferred for adult prosecution would be required to be held in DJJ detention centers and, if so, DJJ estimates significant costs associated with increasing the staffing and capacity to accommodate the increased population. DJJ estimates the cost to implement the bill to be \$36,779,478.¹⁸

DJJ indicates that in FY 2019-20, 801 youth were transferred to adult court, although not all of those youth would necessarily be held in adult jail.¹⁹ DJJ estimates the need for 448 additional FTE to safely and securely handle the increase in youth contemplated by the bill.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

DJJ indicates the bill may have a significant indeterminate fiscal impact to local government expenditures.²¹

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill prohibits juveniles being charged as adults from being housed in adult jails unless a court finds under certain limited circumstances that jail detention is necessary, and in Florida, counties that are not fiscally constrained and do not provide their own juvenile detention care are required to pay for half of the total cost of detention care in their county. As such, the bill will

¹⁸ Florida Department of Juvenile Justice, Agency Analysis of 2021 House Bill 807, p.4 (Mar. 4, 2021).

¹⁹ *Id.*

²⁰ *Id.* at 5.

²¹ *Id.* at 4.

require non-fiscally constrained counties to increase funding for detention cost sharing and may require additional funding to create more space to house the additional juveniles and for increased staff. However, the bill may not qualify as a county/municipality mandate because:

- The Federal requirement for housing juveniles may be considered to contemplate actions by counties or municipalities;
- Counties may be able to shift funding from adult jails to juvenile detention centers to balance the changes required by the bill; or
- The bill may constitute a criminal law.

If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES