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November 1, 2011

The Honorable Rick Scott
Governor
400 South Monroe Street
The Capitol, PL-05
Tallahassee, FL 32399-0001

The Honorable Mike Haridopolos
President of the Senate
404 South Monroe Street
The Capitol, Room 409
Tallahassee, FL 32399-1100

The Honorable Dean Cannon
Speaker of the House of Representatives
402 South Monroe Street
The Capitol, Room 420
Tallahassee, FL 32399-1300

Dear Governor Scott, President Haridopolos, and Speaker Cannon:

The Fiscal Year 2011-12 General Appropriations Act directed the Florida Department of Juvenile Justice (DJJ) and the Florida Association of Counties (FAC) to provide joint recommendations for locally funded and operated juvenile detention by November 1, 2011. A workgroup convened on June 10, 2011, and met on three subsequent occasions. The group submits the following recommendations.

Recommendations

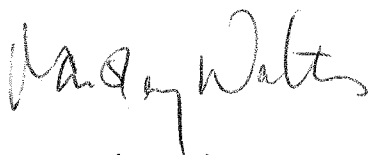
- 1) *Align the DJJ detention budget with detention utilization as provided by existing Florida Statutes.*
- 2) *Proceed with detention reform, including the implementation of a scientifically-validated risk assessment instrument that can accurately predict the risk of reoffending and court appearance.*

Part of the Community, Part of the Solution

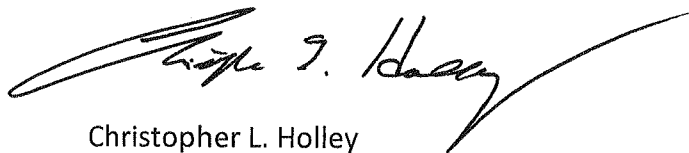
- 3) *DJJ and the counties will collaborate closely to achieve accountable and collaborative governance at the local level.*
- 4) *Engage the Legislature in a discussion regarding the functional scope as it relates to juvenile justice detention and whether the funding, operations and oversight of juvenile justice detention should be the responsibility of the state or the counties.*

The Department and the Association of Counties appreciates the opportunity to collaborate on recommendations relating to the very complex issue of detention cost sharing. The Department and the Association believe that this effort has had a significant positive impact on the relationship between the Department and counties and would encourage the continuation of this important dialogue. Additional information relating to our discussions is attached.

Sincerely,



Wansley Walters
Secretary
Department of Juvenile Justice



Christopher L. Holley
Executive Director
Florida Association of Counties



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Detention Cost Share Proviso Workgroup Discussions and Comments

I. Background

During the 2011 session, the Legislature included proviso language in the General Appropriations act directing the Department of Juvenile Justice (DJJ) and the Florida Association of Counties (FAC) to present joint recommendations to find alternatives to locally funded and operated juvenile detention. The proviso reads:

"From the funds in Specific Appropriations 1068 through 1077A, the Florida Association of Counties and the Department of Juvenile Justice shall provide joint recommendations to fund alternatives for locally funded and operated juvenile detention to the Executive Office of the Governor, the President of the Florida Senate and the Speaker of the Florida House of Representatives no later than November 1, 2011. The Department of Juvenile Justice must notify the Senate Budget Committee, the House Appropriations Committee, and the Governor's Office of Policy and Budget of the date of any meeting at least one week prior to each meeting."

The group that met included five delegates from counties, two members of FAC, and several from DJJ. Secretary Wansley Walters, Deputy Secretary Robert Woody, Chief of Staff Christy Daly, Special Assistant Theda Roberts, and Beth Davis with the Office of Program Accountability consistently attended the meetings.

Commissioner Lois Wexler (Broward County), Commissioner Sally Heyman (Dade County), Tim Burns (Pinellas County), Linda Brehmer-Lanosa (Orange County, Assistant County Attorney) and Wayne Applebee (Sarasota County) were the county representatives. Sarrah Carroll and John Wayne Smith attended on behalf of FAC. In addition to the county delegates selected to participate in the meetings with the Secretary, FAC held webinars and conference calls to solicit input from counties.

The FAC and DJJ workgroup convened on four occasions: June 10, June 27, July 27 and October 14. A smaller subgroup is continuing work on proposed changes to the Juvenile Justice Boards and Councils with the goal of enhancing collaboration between counties and DJJ.

II. Brief Explanation of the Recommendations

1. *Align the DJJ detention budget with detention use as provided by existing Florida Statutes.*

DJJ has submitted a Legislative Budget Request for \$2.7 million that would begin to satisfy this recommendation. Detention funding, as determined by s. 985.686, Florida Statutes, is funded by both the counties and the state. The counties are responsible for the period of time a youth spends in secure detention prior to final court disposition. In an effort to ensure counties are not paying more than their share of secure detention costs, an increase in General Revenue and a decrease in the Shared County/State Juvenile Detention Trust Fund will align the budget to more closely reflect the current predisposition and post-disposition utilization split. In Fiscal Years 2006-07 through 2010-11, the counties have subsidized the state's share of detention by \$34.6 million.

2. *Proceed with detention reform, including the implementation of a scientifically-validated risk assessment instrument that can accurately predict the risk of reoffending and court appearance.*

The Annie E. Casey Foundation has volunteered to assist Florida in creating community alternatives to secure detention, known as the Juvenile Detention Alternative Initiative (JDAI). The Annie E. Casey Foundation and DJJ began by selecting four pilot sites: Broward, Duval, Hillsborough and Palm Beach Counties. Stakeholders from the four communities have been involved in discussing the local case processing systems for juveniles, evaluating data about who is in detention, and finding ways to improve the administration of justice for youth. Community alternatives to detention provide a safe, less expensive way to deal with juveniles in the community.

While many counties have alternatives to detention, the four pilot counties are in the process of developing alternatives with the assistance of DJJ and the Casey Foundation. The goal is to ensure that only dangerous juveniles or those at risk of failing to appear are detained and weed out the youth who can be better served in the community. In order to achieve that goal, Florida needs a risk assessment that accurately predicts youth identified as dangerous juveniles and youth who are likely to fail to appear. The risk assessment can be validated once alternatives are in place so that data can be collected and tested for accuracy.

3. *DJJ and the counties will closely collaborate to achieve accountable and collaborative governance at the local level.*

This collaboration may be achieved by better coordination within the structure of the juvenile justice boards and councils. A subcommittee of the workgroup has met on this issue and will continue to work toward more effective collaboration by DJJ and

community leadership. This group will meet in November at the FAC Legislative Conference.

- 4. Engage the Legislature in a discussion regarding the functional scope as it relates to juvenile justice detention and whether the funding, operations and oversight of juvenile justice detention should be the responsibility of the state or the counties.*

As a result of the passage of Senate Bill 2112, the group agrees that the Legislature should consider the options for funding detention centers. Senate Bill 2112 became law October 1, 2011, allowing counties and sheriffs to operate juvenile detention facilities under the Florida Model Jail Standards guidelines developed for youth detention. This means that the local detention facilities are not required to follow DJJ rules and procedures, but must adhere to all federal regulations, which include sight and sound separation between youth and adults and separate programming as well as the Florida Model Jail Standards for youth detention. Marion and Polk counties now operate their own centers and Seminole plans to begin in January 2012. This has led to a bifurcated detention system with the counties and state operating under different detention center standards.

As part of the legislative budget request process, agencies were required to identify reductions that can be made in Fiscal Year 2012-13 in the event that budget reductions are necessary. In response, DJJ submitted a reduction of \$76.7 million and 1,196 positions to transfer responsibility of the pre-dispositional detention services to the counties. This would close 17 state-operated juvenile detention centers and DJJ would maintain four strategically located detention centers to serve post-dispositional youth only. The proposal includes a reduction of \$76.7 million in trust funds that counties pay DJJ to operate detention centers. This proposed budget reduction, which includes minimal General Revenue savings, provides an opportunity for the Legislature to determine how it wishes for the detention system to operate in the future.

Background: In 2004, the Legislature required the counties to pay for pre-dispositional detention and did not provide a means for local input or oversight over the DJJ detention budget. During the next two fiscal years, the percentage the counties were required to pay for detention closely aligned to the percentage of pre-dispositional youth. In Fiscal Year 2008-09, however, the number of pre-dispositional youth served in secure detention decreased significantly while the appropriation remained static. Through Fiscal Year 2010-11, the funding percent the counties were required to pay continued to exceed the percent of pre-dispositional youth in secure detention; therefore, the counties paid more to house pre-dispositional youth than the state paid to house post dispositional youth, despite these youth receiving the same care in the same detention centers.

As a result of the disparate billings, counties and sheriffs began to explore alternatives to DJJ operated detention facilities. Longstanding statutory language provided that a county could house juveniles from that resident county, as long as the local detention facility

followed DJJ rules and procedures. During the summer of 2010, DJJ hosted a certification task force comprised of members of FAC, counties and sheriffs from around the state. Law enforcement and counties proposed several changes to the DJJ rules relating to detention centers, but DJJ remained steadfast on certain policies. One example includes the training of juvenile detention officers. DJJ requested that every detention officer be trained in the DJJ's Protective Action Response. Law enforcement countered that Certified Law Enforcement Officers were already trained in de-escalation techniques and other de-escalation techniques are recognized on a national level.

Counties continued to express interest in saving tax dollars and began exploring options to house youth locally, and in 2010 Marion County began to operate a local detention facility to house youth from Marion County. At that time, Florida statutes provided Marion County could house only youth from Marion County and youth that commit an offense in Marion County.

Senate Bill 2112 arose out of that discussion. This conforming bill allowed counties and sheriffs to detain juveniles regionally and under a different set of rules. Language in the bill stated that the Florida Model Jail Standards (FMJS) Commission, which creates, amends, and monitors rules relating to the administration of adult jails, would create standards for youth detention in local facilities. In order for counties, sheriffs, or a contracted provider to operate a local detention facility, the entity would have to fully fund pre-adjudication detention for the county, be accredited through the Florida Corrections Accreditation Commission or the American Correctional Association, be inspected annually, and follow the Code of Federal Regulations for juvenile detention including requiring sight and sound separation for juveniles and adults. If these criteria were met, then the individual county would not have to pay into the state's detention cost share system. The bill passed the Senate 38-0 and passed the House 83-35. It was signed by Governor Rick Scott on May 26, 2011, and became law on October 1, 2011.

Since the passage of Senate Bill 2112, the FMJS held several meetings and convened a subcommittee to create youth detention standards. The subcommittee included a representative from DJJ and received assistance from a national expert on juvenile detention in creating the standards. The Youth Detention Standards were adopted and added to the FMJS platform.

While several counties continue to explore the fiscal impacts of operating a local juvenile detention facility, at the time of this publication only Polk County has elected to begin operation under Senate Bill 2112. Polk County expects to save \$2 million over what the county previously paid to the state detention cost share system. It should be noted that Polk County is not actually providing detention services for all of the youth for whom they were previously fiscally responsible. Specifically, Polk has determined that youth on probation who are ordered detained for contempt of court will not be housed at the

county facility. Counties have challenged paying for detention stays that are a result of contempt of court. These youth do not often score for detention, thus highlighting the necessity of a validated risk assessment and a prohibition of detaining youth who are not detention eligible. However, these challenges have been unsuccessful and DJJ will dispute the decision by Polk County to serve only certain juveniles.

With the passage of Senate Bill 2112, two disparate systems of detention care and operational standards exist.

III. Other Items Discussed by the Workgroup

The recommendations provided are the common agreements among DJJ and FAC. Several other options were discussed, including clarifying the statute to clearly define pre-dispositional versus post-dispositional detention and county reinvestment of any cost savings into front-end detention alternatives.

1. Pre v. Post Disposition Defined: Since the initial cost shift in 2004, counties have consistently disputed bills for youth who are above age 18, are in detention beyond the statutory limit of 21 or 30 days, are held in detention for pick up orders or contempt of court charges while on probation or conditional release, fail to appear for court appearances, and youth who are considered dependent (foster youth). The definition of pre versus post disposition did not meet common ground. Estimates provided by the Department indicated that a change of this magnitude would require an additional \$24.6 million in General Revenue in Fiscal Year 2011-12.
2. Funding Related to County Operated Centers: During the workgroup discussions, the Secretary provided a verbal commitment that counties that remain in the state detention system will not be required to pay the remaining balance when a county elects to opt out of the state operated detention system. Proviso was also included in the 2011 General Appropriations Act, which says the cost to counties who remain in the state detention system will not pay this higher cost. The proviso states:

“From the funds in Specific Appropriations 1068 through 1077A, the amount from the Shared County/State Juvenile Detention Trust Fund available to the department shall be reduced by the actual reduction in cost associated with providing detention to those juveniles prior to adjudication from a county that opts to provide detention to juveniles prior to adjudication. The remaining counties that continue to place juveniles in the Department of Juvenile Justice’s detention centers shall have their billings decreased by the actual reductions in cost, with an exception to fiscally constrained counties.”

According to the proviso language, when a county opts to operate their own detention center, the portion of the department’s budget that is funded through the Shared County/State Juvenile Detention Trust Fund will be reduced by the actual cost

associated with providing pre-dispositional detention to juveniles in that county. However, certain costs will remain the responsibility of DJJ. These costs may include costs to transport youth from a county-operated facility to a state-operated facility. Also, the cost to house youth who are from a county that operates its own facility, are arrested in another county, and are detained at a state-operated detention center in pre-dispositional status will now be the responsibility of DJJ. In most instances, the decision by a county to operate a center will result in eliminating state positions, although additional jobs will be produced at the local level. The elimination of state positions will result in the cost of leave pay-outs for state employees at the affected detention center. In the event that the decision by a county to operate a center results in the closure of an existing detention center facility, DJJ will continue to be responsible for the maintenance of the vacant building. In some cases, the county has leased the land to the state at a minimal cost to the state and has expressed interest in using the leased land should the county choose to operate a local detention facility.

3. Investing County Savings into Community Alternative for Secure Detention: The utilization of secure detention declined in four of the past five years. The ongoing work by the counties and DJJ to implement the Juvenile Detention Alternatives Initiative and electronic monitoring will continue to decrease admissions to secure detention. In FY 2011-12, the counties experienced a reduction of \$19.4 million in the amount required to be paid into the Shared County/State Juvenile Detention Trust Fund. The counties were asked to reinvest a portion of these cost savings into front-end detention alternatives, which in turn will continue to reduce the number of youth admitted to secure detention.

Existing Local Government Financial Reporting (LAFR) data indicate that counties expend \$9.9 million for teen court and \$36.3 million for juvenile assessment centers (\$19.1 million in county funding and \$17.2 million from local law enforcement). In order to inventory this cost, FAC began to solicit information from the counties about the local expenditures dedicated to prevention, intervention and diversion. FAC has partnered with the TaxWatch Center for Smart Justice to develop a survey that will be used to get an accurate inventory of the programs and expenditures that local governments dedicate to at-risk youth. The counties agree that community alternatives for judges must be available, yet dedicating resources without knowing how many local dollars are already pledged would not be the best use of very limited local tax dollars.

4. Clarify in statute that detention stays due to violations of probation that are not a new law violation be defined as post dispositional and the responsibility of the state: A non-new law violation of probation occurs when a youth violates the conditions of probation such as breaking curfew, smoking cigarettes, or not attending school.

These acts may violate the terms of probation, but they do not constitute a violation of state law. While Florida Statute prohibits placing a youth in detention for a non-law violation of probation, it is common that these youth are court ordered to secure detention through a pick up order or for contempt of court. New non-law violations of probation accounted for 65,829 detention days in Fiscal Year 2010-11 with an associated cost of \$16.8 million.