IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DEPARTMENT OF JUVENILE JUSTICE, STATE OF FLORIDA,

Appellant,

v.

OKALOOSA COUNTY AND NASSAU COUNTY, Petitioners, and BAY COUNTY and PINELLAS COUNTY, Intervenors, and MIAMI-DADE COUNTY, Intervenor,

Appellees.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D12-3929

Opinion filed June 5, 2013.

An appeal from an order of the Division of Administrative Hearings.

John Milla and Michael J. Wheeler, Assistant General Counsels, Department of Juvenile Justice, Tallahassee, for Appellant.

Carly J. Schrader, Gregory T. Stewart, and Lynn M. Hoshihara of Nabors Giblin & Nickerson, Tallahassee; John R. Dowd, General Counsel, Okaloosa County Commissioners, Shalimar; David A. Hallman, Yulee; Terrell Arline, Panama City; Linda Brehmer-Lanosa, Orlando; Jennifer Wintrode Shuler, Assistant County Attorney, Panama City; Carl Edward Brody and Christy Donovan Pemberton, Assistant County Attorneys, Clearwater, for Appellees.

PER CURIAM.

In this appeal, the Department of Juvenile Justice (DJJ) seeks review of an Administrative Law Judge's (ALJ) Final Order. The Final Order declared certain DJJ rules relating to cost sharing for secure detention invalid exercises of DJJ's authority; specifically, DJJ's interpretations of "final court disposition" and "actual costs." We find the ALJ correctly determined that DJJ's interpretations were improper.

If the language of a statute "is clear and unambiguous and conveys a clear and definite meaning, the statute should be given its plain meaning." Fla. Hosp. v. Agency for Health Care Admin., 823 So. 2d 844, 848 (Fla. 1st DCA 2002). Using the basic tenet of *in pari materia* to construe together statutes relating to the same or similar subject matter does not imply ambiguity. See Fla. Dep't of Envtl. Prot. v. ContractPoint Fla. Parks, LLC, 986 So. 2d 1260, 1265-66 (Fla. 2008) (not resorting to statutory construction, but acknowledging entire sections must be read together); Smith v. Crawford, 645 So. 2d 513, 522-23 (Fla. 1st DCA 1994) ("The legislative intent being plainly expressed, so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain, and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms.") (quoting State v. Egan, 287 So. 2d 1, 4 (Fla. 1973)).

Here, a plain reading of "final court disposition" cannot, as DJJ asserts, limit the term to "commitment." Likewise, "actual costs" cannot mean a figure derived through, as counsel for DJJ put it, a "complicated" formulaic scheme. A plain reading of this clear term indicates otherwise. We need not comment further, other than to commend the ALJ's extensive and accurate analysis of the rules in question.

Accordingly, we AFFIRM.

CLARK and MARSTILLER, JJ., and BOLES, W. JOEL, ASSOCIATE JUDGE, CONCUR.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OKALOOSA COUNTY, FLORIDA, AND NASSAU COUNTY, FLORIDA,	)	
Petitioners,	)	
and	)	
BAY COUNTY AND PINELLAS COUNTY,	)	
Intervenors,	)	
vs.	)	Case No. 12-0891RX
DEPARTMENT OF JUVENILE JUSTICE,	)	
Respondent,	)	
and	)	
MIAMI-DADE COUNTY,	)	
Intervenor.	)	

FINAL ORDER

Pursuant to notice, a final hearing was held in this case on April 23, 2012, in Tallahassee, Florida, before W. David Watkins, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUES

This is a rule challenge brought pursuant to section 120.56, Florida Statutes,[1/] to existing Florida Administrative Code rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017, (the "Challenged Rules"), adopted by the Department of Juvenile

Justice (Department). At issue is whether some or all of the challenged rules constitute an invalid exercise of delegated legislative authority as defined by section 120.52(8), Florida Statutes. The challengers allege the rules are invalid on three grounds:

1) The rules modify the dividing line between county and state responsibility for the costs of secure juvenile detention from "final court disposition" to "commitment";

2) The rules fail to implement the requirement that the counties are only responsible for the "actual costs" of secure juvenile detention for the period of time prior to final court disposition;

3) The rules inappropriately utilize an appropriations bill to modify the amount Petitioners are required to pay for predisposition costs under section 985.686, Florida Statutes.

PRELIMINARY STATEMENT

On July 16, 2006, the Department promulgated rules 63G-1.002, 63G-1.004, 63G-1.007, and 63G-1.008, among others, which set forth definitions and formulated procedures for calculating the shared costs of juvenile detention between the State of Florida and the various counties (Old Rules).

The Old Rules were repealed as of July 6, 2010, and in their place the Department adopted the Challenged Rules 63G-

1.011, 63G-1.013, 63G-1.016, and 63G-1.017 (Challenged Rules or New Rules).[2/]

On March 12, 2012, Okaloosa County and Nassau County filed a joint "Petition for Rule Challenge," which was assigned to the undersigned Administrative Law Judge. On March 27, 2012, challenger Bay County petitioned to intervene. By Order dated April 5, 2012, that petition was granted.

On March 27, 2012, the Division consolidated this rule challenge with DOAH Case Nos. 11-0995, 11-0999, 11-1001, 11-1002, 11-1003, 11-1004, 11-1265, 11-1266, and 11-1268. These cases involved various counties' challenges to the annual reconciliation of the shared cost of juvenile detention for FY 2009-10.

On March 29, 2012, Petitioner Miami-Dade County filed a motion to continue the final hearing in the consolidated cases. During a prehearing conference held on April 5, 2012, the Division granted the motion for continuance and severed the rule challenge for a separate hearing scheduled for April 23-24, 2012, in Tallahassee, Florida.

On April 9, 2012, Miami-Dade County petitioned to Intervene as a party aligned with the Department, and by Order dated April 13, 2012, the petition was granted.

On April 17, 2012, Pinellas County filed a petition to intervene which was granted at the outset of the final hearing on April 23, 2012.

The parties filed a joint pre-hearing stipulation on April 18, 2012, stipulating to certain facts which are admitted and issues of law on which there is agreement. Where relevant, those stipulations have been incorporated within this Final Order.

The final hearing was convened as scheduled on April 23, 2012. At hearing, Petitioners Okaloosa and Nassau Counties and Intervenor, Bay County, offered Joint Exhibits 1-75 which were received into evidence. Petitioners Okaloosa and Nassau Counties presented the testimony of Beth Davis, Office of Program Accountability for the Department; Mark Greenwald, Chief of Research and Planning for the Department[3/]; and Richard Herring, who was accepted as an expert in the legislative budgeting process. In addition, Okaloosa and Nassau Counties requested Official Recognition of Florida Rules of Juvenile Procedure 8.110 and 8.115 and Form 8.947, which was granted. Bay County adopted the testimony of witnesses called by Okaloosa and Nassau Counties.

The Department presented the testimony of Vicki Harris, Chief of the Bureau of Budget for the Department. Department's Exhibits 1-2 were received into evidence.

The two-volume transcript of the final hearing was filed with the Division on May 10, 2012. At the request of Petitioners, the time for filing proposed final orders was extended to May 29, 2012. Okaloosa, Nassau and Bay Counties timely filed a Joint Proposed Final Order, which was joined in by Intervenor Pinellas County (these four counties are collectively referred to as Challengers). Respondent and Intervenor Miami-Dade County also filed Proposed Final Orders. The post-hearing submittals of all parties have been carefully considered in the preparation of this Final Order.

FINDINGS OF FACT

The Parties

1. Respondent, the Department, is the state agency responsible for administering the cost sharing requirements in section 985.686, Florida Statutes, for juvenile detention care.

2. Petitioners and Intervenors are political subdivisions of the State of Florida and are non-fiscally constrained counties subject to the cost sharing requirements of section 985.686.

3. Petitioners and Intervenors are substantially affected by the application of Florida Administrative Code Rules 63G-1.010 through 63G-1.018. (Joint Pre-hearing Stipulation). As such, the Challengers have standing to initiate this proceeding.

The Implementing Statute and the Challenged Rules

4. The statutory process governing the shared county and state responsibility for secure juvenile detention was adopted in 2004, but did not go into effect until 2005.[4/]

5. On July 16, 2006, the Department promulgated rules 63G-1.002, 63G-1.004, 63G-1.007, and 63G-l.008, among others, which set forth definitions and formulated procedures for calculating the shared costs of juvenile detention between the State of Florida and the various counties (Old Rules).

6. The Old Rules were repealed as of July 6, 2010, and, in their place, the Department adopted the Challenged Rules 63G-1.0ll, 63G-1.013, 63G-1.016, and 63G-1.017.

7. The Challenged Rules purport to implement section 985.686, which provides that each county is responsible for paying the costs of providing detention care "for juveniles for the period of time prior to final court disposition." § 985.686(3), Fla. Stat.

8. The statute establishes a cost-sharing system whereby each non-fiscally constrained county is required to be individually provided with an estimate of "its costs of detention care for juveniles who reside in that county for the period of time prior to final court disposition," based on "the prior use of secure detention for juveniles who are residents of that county, as calculated by the department." § 985.686(5), Fla. Stat. (emphasis added).

9. Section 985.686(1) requires non-fiscally constrained counties and Respondent to share the costs of "financial support" for "detention care" for juveniles who are held in detention centers operated by Respondent.

10. Section 985.686(3) requires Petitioners to pay the costs of detention care "for the period of time" prior to final court disposition (predisposition care). Respondent must pay the costs of detention care on or after final court disposition (post-disposition care).

11. Detention care is defined in section 985.686(2)(a) to mean secure detention. Secure detention is defined in section 985.03(18)(a), for the purposes of chapter 985, to include custody "pending" adjudication or disposition as well as custody "pending" placement.

12. Each county must pay the estimated costs at the beginning of each month. At the end of the state fiscal year, "[a]ny difference between the estimated costs and actual costs shall be reconciled. . . " Id.

The Challenged Rules

13. Among the relevant changes made in the Challenged Rules, the Department replaced the definition of "final court disposition" in rule 63G-1.002 with a definition for "commitment" in rule 63G-1.011. Specifically, Old Rule 63G-1.002, states that "final court disposition" means "the date the

court enters a disposition for the subject referral." This definition was replaced by rule 63G-1.011 with a definition of "commitment," which "means the final court disposition of a juvenile delinquency charge through an order placing a youth in the custody of the department for placement in a residential or non-residential program. Commitment to the department is in lieu of a disposition of probation."

14. Rule 63G-1.011(8) includes a definition for "Pre-commitment" that was not included in prior rule 63G-1.002. "Pre-commitment" means "those days a youth is detained in a detention center prior to being committed to the department."

15. The newly-defined terms are incorporated in the challenged rules governing calculation of the estimated funding (63G-1.013); monthly reporting (63G-1.016); and in the calculation of days for the annual reconciliation (63G-1.017).

16. In rule 63G-1.013(b) the Counties' estimated funding is determined by, "[t]he total number of pre-commitment service days in secure detention," which include "all days up to but not including the date of commitment to the department." The rule also requires that counties pay a portion of "the total pre-commitment service days for all counties for the same time period to arrive at each county's percentage of the total."

17. Challenged Rule 63G-1.016 requires the Department to generate a monthly web-based utilization report to provide each

county's "actual usage" for the previous service month. The report includes information on each youth including the "commitment disposition date, if available."

18. In Challenged Rule 63G-1.017, "commitment disposition date" is used to determine the counties' actual costs.

19. The Department's previous rule 63G-1.002 acknowledged that a "final court disposition" might result in several alternative dispositions of a delinquency charge, which, in addition to commitment, could include probation or dismissal of a charge.

20. The challengers contend that under the new rules the counties are responsible for all "Pre-commitment" detention costs regardless of whether the costs accrue after a court enters a final disposition in the case that does not involve commitment of a youth to the custody of the Department for placement in a residential or non-residential program. Commitment is a subset of final court disposition, according to the challengers, since there are other types of dispositions other than commitment. By adopting the current definition of "commitment" in rule 63G-1.011, the challengers contend that the Department has impermissibly restricted and narrowed the term "final court disposition" in violation of the implementing statute.

Navigating the Juvenile Justice System

21. In order to determine the validity of the Challenged Rules it is necessary to understand how juveniles accused of committing a delinquent act are processed in Florida.

22. Without objection, the final hearing testimony of the Honorable Anthony H. Johnson in DOAH Case No. 10-1893, et al., was received in evidence. Judge Johnson is the Circuit Administrative Judge of the Juvenile Division, Ninth Judicial Circuit. Judge Johnson explained the sequence of events that occurs after a juvenile has been arrested and accused of delinquency:

> A. Okay, we'll begin by the arrest of the juvenile. And the juvenile is then taken to the JAC, the Joint Assessment Center, where a decision is made whether to keep the juvenile in detention or to release the juvenile. That decision is based upon something called the DRAI, the Detention Risk Assessment Instrument. How that works probably is not important for the purpose of this except to know that some juveniles are released, and some remain detained.
>
> The juveniles that are [sic] remained detained will appear the following day or within 24 hours before a circuit judge, and it would be the duty judge, the emergency duty judge on the weekends, or a juvenile delinquency judge if it's regular court day.
>
> At that time the judge will determine whether the juvenile should be released or continue to be retained. That's also based upon the DRAI. If the juvenile is detained, he or she will remain for up to 21 days pending their adjudicatory hearing.

Everything in juvenile has a different name. We would call that a trial in any other circumstance.

Now the 21 days is a statutory time limit: however, it's possible in some cases that that 21 days would be extended. If there is a continuance by any party, and for good cause shown, the judge can decide to keep the juvenile detained past 21 days. That's relatively unusual. It's usually resolved, one way or the other, in 21 days.

After the trial is conducted, if the juvenile is found not guilty, of course he or she is released. If they're found guilty, then a decision is made about whether or not they should remain detained pending the disposition in the case.

The disposition—there needs to be time between the adjudication and the disposition so that a pre-disposition report can be prepared. It's really the Department of Juvenile Justice that decides whether or not the child will be committed. We pretend that it's the judge, but it's not really. And that decision is made—is announced in the pre-disposition report.

If the child is committed at the disposition hearing, the judge will order the child committed to the Department. Now, one or two things will happen then. Well, maybe one of three things.

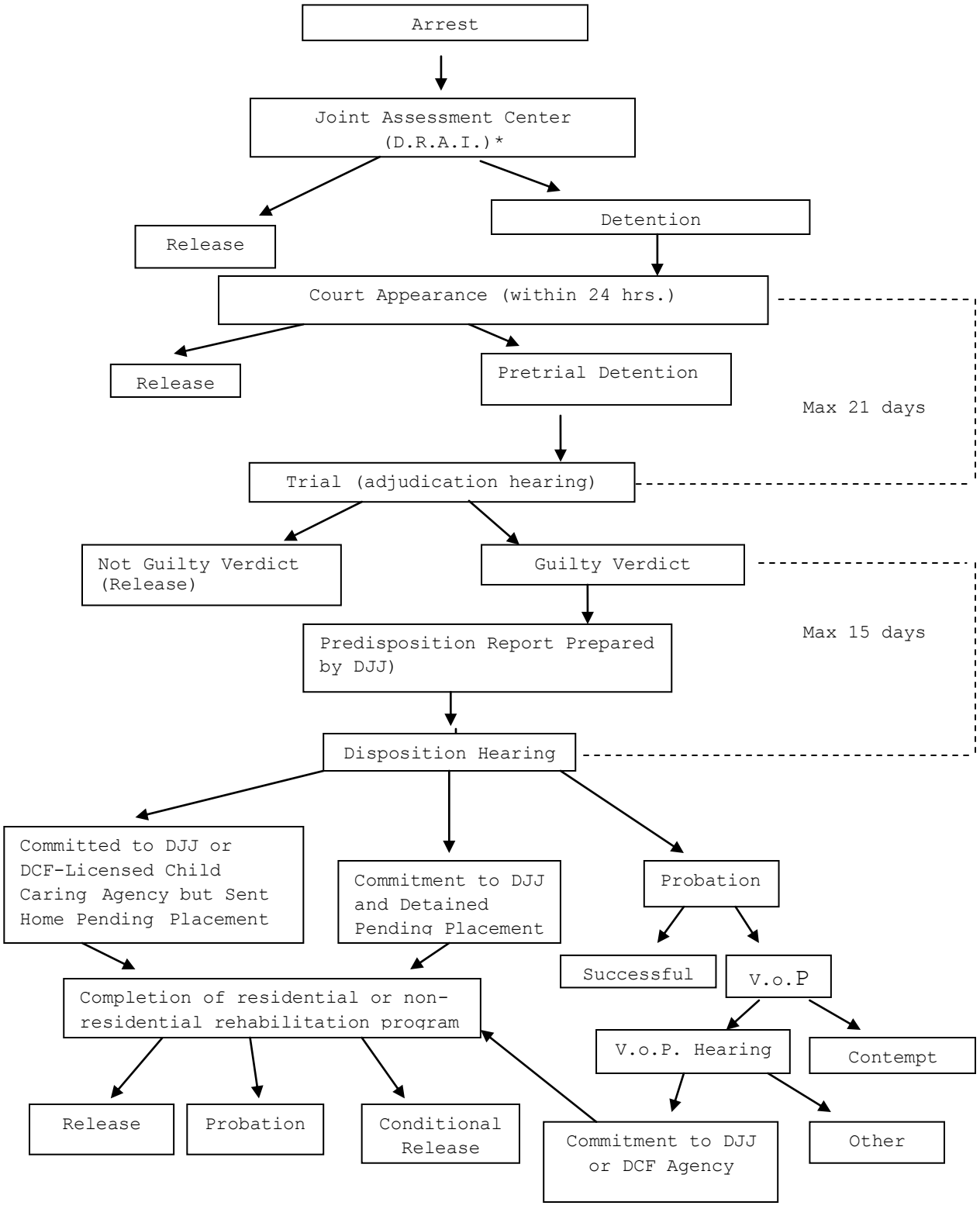
If the child scores detention--let me not say scores. If it's a level eight or above, then the child will remain detained. If it's not that, the child will be released and told to go home on home detention awaiting placement.

Here's where things get, I think, probably for your purposes, a bit complex. Let's say at the disposition, the child--the

> recommendation of the Department is not that the child be committed, but that the child be placed on probation. Then the child goes into the community. The disposition has then been held, and the child's on probation. If the child violates probation, then the child comes back into the system, and then you sort of start this process again, on the violation of probation.
>
> If the child is found to have violated his or her probation, then you go back to the process where the Department makes a recommendation. Could be commitment, it could be something else. The child may be detained during that time period.
>
> Often what will happen is the misconduct of the child will be handled in a more informal manner by the court. The court may decide instead of going through the VOP hearing, violation of probation, I'm going to handle this by holding the child in contempt for disobeying the court's order to go to school, to not use drugs, or whatever the violation was. In that case, the child may be detained for contempt, for a period of 5 days for the first offense, or 15 days for a subsequent offense.

23. Based upon the testimony of Judge Johnson, as well as reference to the applicable statutory provisions,[5/] the following flowchart maps the "throughput" of accused juvenile delinquents in Florida's juvenile justice system from the time of arrest until their release from the system:

FLORIDA'S JUVENILE JUSTICE SYSTEM



* Detention Risk Assessment Instrument

24. Consistent with Judge Johnson's testimony and section 985.433, once a juvenile has been adjudicated delinquent there are two options available to the court at the disposition hearing: commitment or probation.

25. If the court determines to commit the juvenile, its commitment options are circumscribed by section 985.441, which provides in relevant part:

> 985.441 Commitment.—
>
> (1) The court that has jurisdiction of an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:
>
> (a) Commit the child to a licensed child-caring agency willing to receive the child; however, the court may not commit the child to a jail or to a facility used primarily as a detention center or facility or shelter.
>
> (b) Commit the child to the department at a restrictiveness level defined in s. 985.03. Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, monitoring for substance abuse, electronic monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program. If the child is not successful in the conditional release program, the department may use the transfer procedure under subsection (4).

> (c) Commit the child to the department for placement in a program or facility for serious or habitual juvenile offenders in accordance with s. 985.47.

26. Section 985.03(32) defines "licensed child-caring agency" as a person, society, association, or agency licensed by the Department of Children and Families to care for, receive, and board children. Thus, a child may be committed to the custody of an "agency" under the auspices of the Department of Children and Families, or committed directly to the custody of Respondent.

27. Section 985.433 imposes additional requirements on a court which has decided to commit a juvenile offender to the custody of DJJ:

> (7) If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing. The determination shall include a specific finding of the reasons for the decision to adjudicate and to commit the child to the department, including any determination that the child was a member of a criminal gang.

28. When a court's disposition of a juvenile delinquent is probation rather than commitment, section 985.433 applies in relevant part:

> (8) If the court determines not to adjudicate and commit to the department, then the court shall 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's license of the child, community service, and appropriate educational programs as determined by the district school board.

Department Implementation of its "Commitment" Definition

29. The Juvenile Justice Information System (JJIS) is the Department's statewide information system that tracks all delinquency referrals, arrests, placements and disposition data associated with every youth arrested in Florida.

30. Historically, information was pulled from JJIS to determine the number of days billed to the counties. Once a disposition order was entered on a delinquency petition charge, assigning a youth to probation, commitment, or other possible outcomes, the system would "stop billing" the counties as of the date of the order, and any subsequent detention days would be assigned to the State.

31. Under the new "commitment" definition as set forth in the Challenged Rules (and as implemented by JJIS), the Department's information system only looks for a "qualifying disposition to a commitment status" or placement on conditional release. All other days are considered pre-disposition, and therefore the responsibility of the counties. This change has

narrowed the types of dispositions captured by the computer coding.

32. Although it is possible to obtain disposition dates from JJIS based on a written disposition order for dispositions such as probation or dismissal of the charge, that information is no longer used in the cost sharing system or provided to the counties unless it is a commitment disposition. However, pursuant to Juvenile Procedure rule 8.115 (which governs disposition hearings), all disposition orders must not only include the disposition of each count, but also specify the "amount of time served in secure detention before disposition." See, Fla. R. Juv. Pr. 8.115(d)(2). Thus, the Department could readily determine the number of predisposition detention days for all court dispositions, including probation, by accessing the information contained in the disposition order.

33. The Challenged Rules shift a greater responsibility of costs to counties, because the Department only obligates itself to pay for one type of post-disposition expense, i.e. those associated with commitment of the juvenile to the custody of the Department for placement in a residential or non-residential program. The Department assigns any other days to the counties, including utilization days occurring after a disposition has been entered assigning a juvenile to probation, or dismissing the charge.

34. Other costs for post-disposition activities that result in secure detention, such as violation of probation, pickup orders, or contempt of court, that do not involve commitment become the responsibility of the counties. Additionally, any detention days for juveniles waiting for private placement outside of the Department, such as commitment to a licensed child caring agency, would also be counted as pre-dispositional and billed to the counties.

35. The overall impact of the definitional change from "final court disposition" to "commitment" has been a reduction in the number of detention days assigned to the State, and an increase in the number of days assigned to the counties. This shift in days numbers in the tens of thousands.

36. The Challenged Rules limit the state's statutory responsibility for detention costs by narrowing "final court disposition" to "commitment." The result is a shift in additional detention care costs to the counties in contravention of section 985.686.

37. The Department attempted to defend its use of the term "commitment" as a reasonable interpretation of "final court disposition" through the testimony of its representative, Beth Davis. Ms. Davis explained that in the Department's view, probation, while a form of "disposition," is not a "final court disposition," because the "case is not closed" until the youth

successfully completes probation. However, this interpretation ignores the fact that juvenile offenders committed to the Department often serve a term of probation following completion of their residential rehabilitation.[6/] Under the Department's reasoning, there would be no "final court disposition" until those youths successfully completed their terms of post-commitment probation and their cases are closed. By this logic "commitment" would not accurately represent the dividing line between state and county responsibility, since "final court disposition" would not occur until successful completion of post-commitment probation. The Department's position in this regard is internally inconsistent and not supported by facts or logic. Accordingly, the Department's position that "final court disposition" does not occur until completion of probation is rejected. Under section 985.433(8), probation is one of the possible statutory outcomes of the disposition hearing, and this record does not support the Department's position that probation is any less a "final court disposition" than "commitment."[7/]

38. Also problematic to the Department's position is the situation created when a delinquent is placed on probation at the disposition hearing and subsequently violates the terms of probation. Under this scenario, the juvenile will be taken into custody[8/] and brought before the court having jurisdiction. If the court determines a violation has occurred, rather than go

through a formal violation of probation hearing, it may find the youth in contempt of court and order the child detained for up to five days for the first offense and up to 15 days for subsequent offenses.[9/] According to Ms. Davis, the days during which the delinquent is detained for contempt of court are considered "predispositional" and therefore the financial responsibility of the counties.

39. The above scenario highlights the unreasonableness of the Department's use of "commitment" as the line of demarcation for state and county responsibility. Under this scenario, a disposition hearing was held pursuant to section 985.433, and the court ordered a disposition of probation pursuant to 985.433(8). However, if the youth violates probation and consequently is held in contempt of court, predisposition days accrue to the detriment of the counties, notwithstanding the prior court disposition of probation.

Change in Department Methodology for Determining Estimate and Reconciliation Amounts Billed to Counties.

40. For the first two years of detention-cost sharing, the Department based a county's obligation on a per diem approach. The Department applied a methodology for billing counties their share of secure detention cost based on a "per diem rate," where each county paid an amount based on the number of their "predispositional days" times a cost per day calculated by the

Department that applied to both pre and post-dispositional days. The cost per day was derived by dividing the total costs for secure detention program by the number of total utilization days. An estimate was provided based on the budgeted amount for detention, and a reconciliation was performed at the end of the year to "true-up" the amounts billed to the counties to the actual costs based on, at that time, a cost per day for the entire secure detention program.

41. However, as a result of a challenge brought by Hillsborough County against the Department in DOAH Case No. 07-4398, Administrative Law Judge Daniel Manry issued a Recommended Order on March 7, 2008, invalidating the Department's methodology under rule 63G-1.004, regarding the Department's process for providing estimates to the counties. Judge Manry concluded that the Department's per diem methodology conflicted with its procedures outlined in rule 63G-1.004. This rule requires that the Department determine the estimate based on the following:

> (2) Each County will receive a percentage computed by dividing the number of days used during the previous year by the total number of days used by all counties. The resulting percentage, when multiplied by the cost of detention care as fixed by the legislature, constitutes the county's estimated annual cost.

42. "Cost of detention care" is defined in the Old Rules as "the cost of providing detention care as determined by the General Appropriations Act." (G.A.A.) Fla. Admin. Code R. 63G-1.002(1). Significantly, this term was only utilized in relation to the estimate, and was not used with regard to the annual reconciliation process.

43. Judge Manry did not make any findings or conclusions with regard to rule 63G-1.008, which governed the annual reconciliation process. Presumably, this is because the process provided in the Old Rules for the annual reconciliation is not the same as the process outlined for the estimate. Instead, rule 63G-1.008 provides only that the reconciliation statement "shall reflect the difference between the estimated costs paid by the county during the past fiscal year and the actual cost of the county's usage during that period." There was no requirement in rule 63G-1.008 that the reconciliation be based on anything within the G.A.A.; the only time the G.A.A was mentioned was with regard to the estimate.

44. Beginning in FY 07-08, the Department began to apply a different approach that did not use a per-diem methodology, but instead calculated the percentage of each county's pre-dispositional days as compared to the other counties and multiplied that amount by the Shared Trust Fund. This methodology was applied not just to the estimate process, but

also to the reconciliation process. Effective July 6, 2010, this new approach was specifically adopted by the Challenged Rules into the reconciliation process. Fla. Admin. Code R. 63G-1.017.

Impact of the New Approach on the Counties

45. When the Department abandoned the cost per day approach it created an inequity and raised the cost to counties over that of the State for secure detention. This inequity is a result of a combination of several factors. Under the Department's revised approach, it allocates amongst the counties as a group the budgeted amount for the Shared Trust Fund as determined by the G.A.A. It assigns this amount to individual counties based on utilization numbers from the fiscal year two years prior to the current fiscal year. For example, for the estimate for FY 09-10, the utilization numbers for FY 07-08 were used. The counties are billed monthly based on this amount.

46. As the year progresses, the Department expends amounts up to its budget authority to support the secure detention program from four funding sources,[10/] regardless of whether these amounts are applied to pre- or post-dispositional expenditures.

47. The final bill to each county is based on the annual reconciliation done at the end of the year. Under the Department's methodology adopted by the Challenged Rule 63G-1.017 in 2010, the Department allocates only the expenditures

from the Shared Trust Fund amongst the counties based on a percentage of an individual counties' actual utilization numbers as compared to all other counties. However, because the Department makes no effort to expend funds from the Shared Trust Fund only for the costs of predisposition secure detention, there is no correlation between the expenditures made from this trust fund and the statutory responsibility of each county to pay its "actual costs" "for the period of time prior to final court disposition." Although counties are only authorized and obligated by the statute to pay for predispositional costs, the Shared Trust Fund, which contains the revenues from the county billings, is being used to fund both predispositional and postdispositional costs.[11/]

48. In effect, under the Challenged Rules the Department never "trues-up" the estimated amounts billed to each county with the respective county's statutory share of the actual costs as contemplated by section 985.686.

49. The percentage of predispositional days of secure detention which are the counties' responsibility does not match the percentage of revenues allocated to the counties. This inequity establishes that the counties are in fact funding a portion of post-disposition detention days, which are the State's responsibility pursuant to statute. Indeed, on cross-examination Department witnesses specifically acknowledged that

the legislature is underfunding the Department's statutory responsibility, and that the counties are subsidizing a portion of the state's share. The evidence established that for fiscal year (FY) 2007-08 alone, the counties paid $2,980,716 over the actual cost of pre-disposition days.

50. The amount by which the counties have subsidized the state's share of detention costs in recent years is likely understated. This is because the Department began applying its definition of commitment in FY 2009-2010, rather than the statutory dividing line of "final court disposition." Because the Department does not track the dates of disposition other than for a commitment disposition, the extent of the effect of this definitional change is uncertain. However, evidence presented at hearing suggests that the effect on the costs allocated to the counties is substantial.

51. Petitioners presented evidence of an alternative calculation of detention costs to the counties based on a cost per day methodology, similar to the methodology employed by the Department prior to the 07-08 fiscal year. For FY 08-09, Petitioners' expert calculated that the cost per day was $224, based on utilization days for both the counties and the state divided by the total expenditures for the secure detention program. For FY 09-10, this same calculation resulted in a cost per day of $255.

52. By applying this cost-per-day figure, Petitioners' expert calculated that for FY 08-09, the non-fiscally constrained counties would be required to pay $72,507,456 as their portion of secure detention costs, as compared to the $90,859,820 the Department assessed these counties. Thus, these counties paid $18,352,364 more for detention cost sharing for 08-09 than they would have under the prior per diem methodology.

53. Similarly, for FY 09-10, Petitioners' expert calculated that the non-fiscally constrained counties would be required to pay $80,205,660 under a cost-per-day analysis, as compared to the $85,317,526 these counties were assessed under the Department's current methodology. These counties paid $5,111,866 more for detention cost sharing for FY 09-10 than they would have under the prior per-diem methodology. In addition, because the definitional change to commitment was applied for this fiscal year, there is evidence that the dollar difference in the two methodologies is significantly understated for that fiscal year.

54. This testimony is persuasive regarding impacts on the counties. In fact, the Department's own documents reflect that for FY 08-09, the counties had subsidized the state's portion of detention costs by $17,733,995. For FY 09-10, this number was $5,412,546.

55. This analysis highlights the inequities in the Department's methodology, as promulgated in the Challenged Rules. For example, for FY 2008-09, the Department was paying $127 per day for their post-dispositional days, while the counties were paying $284 per day, more than double the Department's cost per day, despite the fact that a day of secure detention, whether pre- or post-dispositional, has the same actual cost.

56. The annual reconciliation process as set forth in the Challenged Rules conflicts with section 985.686, since it results in counties being assessed more than the "actual costs" "for the period of time prior to final court disposition."

57. A preponderance of the evidence established that the Challenged Rules enlarge, modify and contravene chapter 985 and specifically section 985.686, Florida Statutes.

CONCLUSIONS OF LAW

58. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to sections 120.56, 120.569, and 120.57(1), Florida Statutes. Jurisdiction attaches when a person who is substantially affected by an agency's rule claims that it is an invalid exercise of delegated legislative authority.

59. The parties stipulated that Petitioners have standing to initiate this proceeding. (Prehearing Stipulation, p. 7).

In addition, Petitioners and Intervenors have demonstrated that they meet the "substantial interests" test for standing established in Agrico Chemical Co. v. Dep't of Envtl. Reg., 406 So. 2d 478 (Fla. 2d DCA 1981).

60. As the parties challenging an existing agency rule, Petitioners have the burden to prove by a preponderance of the evidence that the challenged rule constitutes an invalid exercise of delegated legislative authority as to the objections raised. § 120.56(3)(a), Fla. Stat. In this instance Petitioners claim the Challenged Rules are an invalid exercise of delegated legislative authority in that they enlarge, modify, or contravene the specific provisions of law implemented, i.e. section 985.686, Florida Statutes.

61. Section 120.52(8), Florida Statutes, defines what constitutes an "invalid exercise of delegated legislative authority":

> (8) "Invalid exercise of delegated legislative authority" means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:
>
> (a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

62. Historically, agencies enjoyed "wide discretion" when exercising their rulemaking authority. Statutory changes to

laws which authorize rulemaking have in recent years circumscribed the amount of discretion that agencies may employ. S.W. Fla. Water Mgmnt. Dist. v. Save the Manatee Club, Inc., 773 So. 2d 594 (Fla. 1st DCA 2000); see also Daniel Manry, "Agency Exercise of Legislative Power and ALJ Veto Authority," 28 J. Nat'l Ass'n L. Jud. 421 (2008 Fall).

"Final Court Disposition" v. "Commitment

63. As noted, section 985.686 governs the shared county and state responsibility for juvenile detention in secure facilities. The plain meaning of section 985.686(3) only authorizes the Department to charge a county for "the costs of providing detention care . . . for juveniles for the period of time prior to final court disposition." (Emphasis added). This phrase, which establishes the cut-off point between a county's cost and the state's cost, is actually mentioned five times in section 985.686. Aside from subsection 3, the phrase "final court disposition" is also included twice in subsection 4(a), once in subsection 4(b) and once in subsection 5.

64. Contrary to this statutory authority, the Challenged Rules define this dividing line as "commitment" rather than "final court disposition." The Department's definition of "commitment" substantially modifies the statutory dividing line of "final court disposition" applicable in determining the

counties' responsibilities for the costs of secure juvenile detention. This conclusion is supported by a review of chapter 985, the Florida Rules of Juvenile Procedure, and the evidence received at hearing.

Chapter 985 and Florida Rules of Juvenile Procedure

65. Notably, the term "commitment" does not exist anywhere in section 985.686. Although "final court disposition" is not specifically defined in section 985.686, other portions of chapter 985 are instructive, and clearly establish that commitment is but one type of disposition.

66. The doctrine of in pari materia is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the legislature's intent. See Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 455 (Fla. 1992) ("Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another."); Fla. Dep't of State v. Martin, 916 So. 2d 763, 768 (Fla. 2005); see also K.J.F. v. State, 44 So. 3d 1204 (Fla. 1st DCA 2010) (court considers section 985.4815 in pari materia with the remainder of Chapter 985 and section 943.0435). To approve the Department's rules substituting "commitment" for "final court

disposition" is inconsistent with these principals of statutory construction.

67. Although the phrase "final court disposition" is not specifically defined, the term "disposition" occurs over 100 times in chapter 985. And there is a separate section of the chapter, Part VII, which deals with "Disposition; Postdisposition." A review of chapter 985 demonstrates that the term "commitment" means something much narrower than the broader term "final court disposition." See § 985.03(21), (defining term "disposition hearing" as "a hearing in which the court determines the most appropriate dispositional services in the least restrictive available setting provided for under part VII, in delinquency cases"); § 985.185, (governing "evaluations for disposition"); § 985.335, (governing the child's response to the State's petition, noting a variety of options available to the court at a disposition hearing); § 985.35, (regarding the adjudicatory process); § 985.43, (discussing predisposition reports); § 985.433, (regarding disposition hearings); § 985.441, (providing for differing types of commitment).

68. Generally, juvenile delinquency law contemplates an adjudicatory hearing, which is roughly equivalent to a guilt phase of a criminal trial, and a disposition hearing, which is similar to sentencing. See E.A.R. v. State, 4 So. 3d 614 (Fla.

2009). The disposition hearing may or may not be held at the same time as the adjudicatory hearing. §§ 985.35, 985.433, Fla. Stat.; Fla. Rs. Juv. P. 8.110, 8.115. Section 985.433, provides that for disposition hearings in delinquency cases, the court is to "determine the appropriate disposition to be made with regard to the child." § 985.433(3), Fla. Stat. This section specifically provides that the court must enter a disposition order in writing. § 985.433(10), Fla. Stat.

A disposition under this statute could provide for commitment, or for probation. § 985.433(7)-(8), Fla. Stat. The disposition order shall "state the disposition of each count, specifying the charge title, degree of offense, maximum penalty defined by statute and specifying the amount of time served in secure detention before disposition." Fla. R. Juv. P. 8.115. Further, the Rules of Juvenile Procedure provides Form 8.947, Disposition Order. The form order provides options such as commitment to a licensed child caring agency, commitment to the Department for residential placement of various risk levels, Juvenile Probation, or Dismissal of the Case. Fla. R. Juv. P. Form 8.947.

69. A disposition order, including for probation, is a final appealable order.[12/] See J.T.R. v. Florida, 79 So. 3d 839 (Fla. 1st DCA 2012) ("J.T.R., a minor born in 1994, appeals a final disposition order wherein the trial court withheld

adjudication and imposed probation for the offense of video voyeurism as proscribed in section 810.145(2)(a), Florida Statutes"); K.H. v. Florida, 29 So. 3d 426 (Fla. 5th DCA 2010) (K.H. "appeals the trial court's final disposition order withholding adjudication of delinquency and imposing six months of probation after finding K.H. guilty of furnishing a weapon to a minor under eighteen years of age"); K.J.F. v. State, 44 So. 3d 1204 (Fla. 1st DCA 2010) ("K.J.F., a child, appeals a final disposition entered after he pled guilty . . . The trial court withheld adjudication of delinquency, placed K.J.F. on probation, and ordered K.J.F. to register as a sexual offender.").

70. When read in pari materia, the applicable statutes, as well as the Rules of Juvenile Procedure, clearly demonstrate that a "final court disposition" is not necessarily an order of commitment to the Department, but rather includes other dispositions such as commitment outside of the Department, juvenile probation, and dismissal of the charge.

71. Competent evidence established that there are detention days associated with dispositions other than commitment that are currently being charged to the counties, such as time waiting to be picked up by a parent following a disposition of probation or dismissal of charges. And there are other varying secure-detention days which should be post-

dispositional, and charged to the state under the statutory dividing line of "final court disposition" which are evidently being charged to the counties under the Department's commitment definition. Examples include days in detention for violations of probation, and contempt of court relating to a charge that has already been disposed. (See also Old Rule 63G-1.004(1)(b), providing "placements associated with administrative handling, such as pick-up orders and violations of probation, will be matched to a disposition date for their corresponding statutory charge").

72. In the Challenged Rules the Department limited the statutory term "final court disposition" only to final court disposition orders of commitment to the Department. With the adoption of the Challenged Rules, the Department took the broad category of "final court disposition" and limited it to one type of disposition, i.e. commitment to the Department. Thus, the Challenged Rules enlarge, modify, or contravene the specific provisions of law implemented. Although the Department defends its rule as a clarification of a statutory term, the Department has no authority as a matter of law to further limit a statutory term beyond its plain meaning.

73. Agencies once had broad discretion to "flesh out" an articulated legislative policy with rulemaking. See Askew v. Cross Key Waterways, 372 So. 2d 913 (Fla. 1978), Brewster

Phosphates v. Dep't of Envtl. Reg., 444 So. 2d 483 (Fla. 1st DCA 1984). However, even then, courts employed a fundamental precept arising from the separation of powers doctrine that an agency may not redefine statutory terms to modify the meaning of a statute. See Campus Commc'ns, Inc. v. Dep't of Rev., 473 So. 2d 1290 (Fla. 1985) (department rule defining "newspaper" for purposes of a statutory sales tax exemption invalid for adding criteria to statute); see also Dep't of Bus. Reg. v. Salvation Ltd. Inc., 452 So. 2d 65 (Fla. 1st DCA 1984) (providing that a rule which added a fifth criterion that meals must be prepared and cooked on the premises to the existing statutory criteria for a special restaurant beverage license "enlarged upon the statutory criteria and, thus, exceeded the 'yardstick' laid down by the legislature"); Pedersen v. Green, 105 So. 2d 1 (Fla. 1958) (where statute excepted "feed" from sales tax, agency cannot adopt rule limiting exemption to feed for animals kept for agricultural purposes thereby excluding feed for zoo animals). Nor may an agency apply a construction which conflicts with the plain language of the statute.

74. The Legislature has since amended Chapter 120 to tighten and clarify the discretion of agencies to adopt rules. In State v. Day Cruise Association, Inc., 794 So. 2d 696,

700 (Fla. 1st DCA 2001), the First District tracked these legislative changes stating:

> Under the 1996 and 1999 amendments to the APA, it is now clear, agencies have rulemaking authority only where the Legislature has enacted a specific statute, and authorized the agency to implement it, and then only if the (proposed) rule implements or interprets specific powers or duties, as opposed to improvising in an area that can be said to fall only generally within some class of powers or duties the Legislature has conferred on the agency.

Id. at 700. See also Lamar Outdoor Advertising-Lakeland v. Fla. Dep't of Transp., 17 So. 3d 799 (Fla. 1st DCA 2009); Fla. Elections Comm'n v. Blair, 52 So. 3d 9 (Fla. 1st DCA 2010); SW. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc., 773 So. 2d 594, 599 (Fla. 1st DCA 2000); Golden West Financial Corporation v. Florida Department of Revenue, 975 So. 2d 567 (Fla. 1st DCA 2008).

75. When reviewing the above statutory authority in pari materia, the Department's definitions of "commitment" and "pre-commitment" (in rule 63G-1.011(2) and (8)) and application of these terms as the dividing line between the counties' and state's responsibility for the costs of secure detention (in rules 63G-1.013, 63G-1.016, and 63G-1.017) are an invalid exercise of delegated legislative authority. The Challenged Rules exceed the powers, functions and duties delegated by the

Legislature, and specifically violate 985.686, Florida Statutes. For the same reason, the rules exceed the grant of rulemaking authority, and enlarge, modify, and contravene the specific provisions of law that the rules purport to implement.

76. Based on the record before this fact-finder, and based on the findings of fact and conclusions of law made herein, the undersigned concludes that the Department's narrow definition of "commitment" as promulgated in the Challenged Rules is in conflict with the applicable statute, which requires the dividing line of responsibility between the state and the counties to be "final court disposition." Accordingly, the Department's definitions of "commitment" and "pre-commitment" in rule 63G-1.011 (2) and (8) and application of these terms as the dividing line between the counties' and state's responsibility for the costs of secure detention in rules 63G-1.013, 63G-1.016, and 63G-1.017 constitute an invalid exercise of delegated legislative authority.

Actual Costs and the Reconciliation Process

77. Section 985.686(5) provides that the difference between the estimated costs for each county and its "actual costs" for secure juvenile detention "for the period of time prior to final court disposition" shall be reconciled at the end of the state fiscal year.

78. Challenged Rule 63G-1.013 governs how the Department calculates "[e]stimates for each county's individual portion of detention funding" and states as follows:

> (1) Estimates for each county's individual portion of detention funding will be calculated as follows:
>
> (a) All youth served in secure detention during the most recently reconciled previous fiscal year as reflected in the JJIS will be identified;
>
> (b) The total number of pre-commitment service days in secure detention is computed by including all days up to but not including the date of commitment to the department.
>
> (2) The total number of pre-commitment service days for each county from the most recently reconciled previous fiscal year utilization data will be divided by the total pre-commitment service days for all counties for that same time period to arrive at each county's percentage of the total.
>
> (3) Each county's percentage will be multiplied by the total estimated annual appropriation in the shared county/state juvenile detention trust fund for the upcoming fiscal year to determine each county's share of the total budget.
>
> (4) The estimated share of the total budget will be billed to the counties in monthly installments.
>
> (5) Invoices are to be mailed at the beginning of the month prior to the service period, so that an invoice for the August service period will be mailed in July.

79. Unlike its predecessor, Rule 63G-1.008, which specifically included the statutory directive of "actual cost," Rule 63G-1.017 requires the same methodology for the annual reconciliation as for the estimate, and merely recalculates each county's share of the Shared County/State Juvenile Detention Trust Fund based on that county's "actual utilization" as provided in subsections 4, 5, and 6:

> (4) In October of each year, the department will perform an annual reconciliation of utilization and costs for the prior fiscal year. Based on a county's actual utilization, a recalculation of that county's share of the shared county/state juvenile detention trust fund expenditures will be performed.
>
> (5) In November of each year, the department will provide each county an annual reconcilation statement for the previous fiscal year. The statement shall reflect the difference between the amount paid by the county based on the estimated utilization and the actual utilization reconciled in subsection (4) above.
>
> (6) If the total amount paid by a county falls short of the amount owed based on actual utilization, the county will be invoiced for that additional amount. The amount due will be applied to the county's account. An invoice will accompany the reconciliation statement, and shall be payable on or before March 1. If the amount paid by a county exceeds the amount owed based on actual utilization, the county will receive a credit. The credit will be applied to the county's account and be included on the invoice sent in November.

80. Under Challenged Rule 63G-1.017, the Department never determines the "actual costs" of pre-disposition detention care, but only the actual expenditures from the Shared Trust Fund. These are not equivalent because, as the Department has acknowledged, the Shared Trust Fund is used in part to fund post-dispositional care, which is the responsibility of the State. Accordingly, the Department's methodology, as implemented through the Challenged Rules, does not divide the costs of secure juvenile detention between the counties and the state based on the criteria provided in the statute, and therefore conflicts with section 985.686, Florida Statutes.

81. Although the Department's methodology "trues up" actual utilization days, this has no effect on the division of the detention costs between the state and the counties, since that amount is predetermined based on the Shared Trust Fund. The "recalculation" that is performed as part of the annual reconciliation merely redistributes the responsibilities of a county as compared to other counties. No financial responsibility is shifted between the state and the counties based on the annual reconciliation process, contrary to the intent and plain language of the statute.

82. The method of allocating costs as set forth in the Challenged Rules results in the Department having a substantially reduced cost per post-disposition day as compared

to the cost per pre-disposition day allocated to the paying counties. The Department has acknowledged this has resulted in the counties essentially subsidizing the costs of post-disposition days, which by statute, can only be allocated to the State.

83. For the above reasons, the Challenged Rules are an invalid exercise of delegated legislative authority because they go beyond the powers, functions and duties delegated by the legislature in section 985.686, Florida Statutes. For the same reason, the Challenged Rules exceed the grant of rulemaking authority, and enlarge, modify, and contravene the specific provisions of law that the rules purport to implement.

84. The Department may not interpret a law it is charged with administering in an arbitrary or capricious manner. As a result of its arbitrary and erroneous reading of the law it is charged with administering, no deference would be due to such an interpretation by the agency. See, e.g., Pan American World Airways, Inc. v. Florida Public Service Com., 427 So. 2d 716, 719 (Fla. 1983) ("[T]he administrative construction of a statute by an agency or body responsible for the statute's administration is entitled to great weight and should not be overturned unless clearly erroneous.").

85. Where the language of a statute is clear and unambiguous and given the common meaning, a contrary

interpretation is an invalid exercise of delegated legislative authority. See Campus Commc'ns, Inc. v. Fla. Dep't of Revenue, 473 So. 2d 1290, 1291 (Fla. 1985); Fla. Dep't of Health & Rehab. Servs. v. McTigue, 387 So. 2d 454 (Fla. 1st DCA 1980).

86. Finally, Petitioners argue that, as a matter of law, the Challenged Rules are invalid because they base the costs of secure detention for the counties on an appropriation, and not actual costs of secure juvenile detention "for the period of time prior to final court disposition," contrary to the substantive law. According to Petitioners, the Department's interpretation of the G.A.A., through the Challenged Rules, would effectively render it unconstitutional, as it applies the G.A.A. in conflict with existing substantive law.

87. Given the preceding determination that the Challenged Rules constitute an invalid exercise of delegated legislative authority on other grounds it is unnecessary for the undersigned to further determine whether the Department's interpretation of the G.A.A., as manifested in the challenged rules, would violate state constitutional law.

Attorneys' Fees and Costs Pursuant to section 120.595(3)

88. When a rule or portion of a rule has been determined invalid under section 120.56(3), then section 120.595(3) requires an award of reasonable costs and attorneys' fees to the Petitioners (up to $50,000) unless the Department demonstrates

that its actions were "substantially justified" or special circumstances exist which would make the award unjust. "Substantially justified" is defined in the statute as "a reasonable basis in law and fact at the time the actions were taken by the agency." § 120.595(3), Fla. Stat. Petitioners requested section 120.595 fees in the event that its rule challenge is successful. The Department's adoption of the Challenged Rules, which clearly conflict with the plain language of the law implemented, section 985.686, Florida Statutes, was not substantially justified, nor has the Department demonstrated that special circumstances exist which would make the award unjust. An award of fees and costs based upon section 120.595(3) is appropriate. Jurisdiction is retained to determine the amount of such award.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Florida Administrative Code Rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017 constitute an invalid exercise of delegated legislative authority.

It is further ORDERED that the Department is liable for attorneys' fees and costs to Petitioners in an amount not to exceed $50,000, pursuant to section 120.595, Florida Statutes. Jurisdiction is retained to determine the amount.

DONE AND ORDERED this 17th day of July, 2012, in Tallahassee, Leon County, Florida.

W. DAVID WATKINS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of July, 2012.

ENDNOTES

[1/] All statutory references are to the 2011 version of the Florida Statutes, unless otherwise indicated.

[1/] All statutory references are to the 2011 version of the Florida Statutes, unless otherwise indicated.

[2/] Additional rules adopted at that time that are not challenged in these proceedings include Rules 63G-1.010, 63G-1.012, 63G-1.014, 63G-1.015, and 63G-1.018.

[3/] As employees of Respondent, these witnesses were determined to be witnesses adverse to the challenging counties.

[4/] A lawsuit brought by Florida Association of Counties was successful in challenging the law as an unfunded mandate. The legislature subsequently readopted the law in a special session and cured that particular constitutional defect.

[5/] See sections 985.03 (Definitions); 985.255 (Detention Criteria; detention hearing); 985.433 (Disposition Hearings in delinquency cases); 985.435 (Probation and postcommitment

probation; community service); 985.439 (Violation of probation or postcommitment probation); and 985.441 (commitment).

[6/] Section 985.433(9) would suggest that probation is mandatory in all cases regardless of the disposition ordered in the disposition hearing: "After appropriate sanctions for the offense are determined, the court shall develop, approve, and order a plan of probation . . .". However, see also section 985.433(7)(c) which provides "[T]he court may also require that the child be placed in a probation program following the child's discharge from commitment."

[7/] The finding that a term of probation ordered in a section 985.433 disposition hearing is as much a "final court disposition" as "commitment" is supported by the fact that revocation, modification, or continuation of probation requires the entry of a new disposition order by the court. See section 985.439(4), and Juvenile Procedure Rule 8.120(a)(5).

[8/] When taken into custody for violation of probation, youths are held in a "consequence unit" pending a probable cause hearing. A consequence unit is a secure facility specifically designated by the Department for children who are taken into custody under section 985.101 for violating probation or postcommitment probation, or who have been found by the court to have violated the conditions of probation or postcommitment probation.

[9/] The sanction of contempt is sometimes used by juvenile court judges as an alternative to the formal violation of probation proceedings governed by section 985.439 and Juvenile Procedure Rule 8.120(a).

[10/] Florida's Secure Detention Program is funded by : General Revenue; the shared County/State Trust Fund; the Grants and Donations Trust Fund; and the Federal Grants Trust Fund.

[11/] An additional inequity under the new rules results because the other two trust funds used to fund the costs of secure detention, the Federal Grants Trust Fund and the Grants and Donations Trust Fund, are used exclusively for post-disposition days even though the revenue in these funds is clearly to offset the costs of both pre- and post-disposition days.

[12/] By contrast, see 985.433(6), which specifically precludes appeal of the predisposition report prepared pursuant to this section.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.