STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY, SANTA ROSA COUNTY, ALACHUA COUNTY, ORANGE COUNTY, PINELLAS COUNTY, ESCAMBIA COUNTY, HERNANDO COUNTY AND BROWARD COUNTY,	)	
Petitioners,	)	Case Nos. 10-1893 10-1894 10-1895 10-1896 10-1945 10-2194 10-2195 10-3166
and	)	
CITY OF JACKSONVILLE, BAY COUNTY, BREVARD COUNTY, SEMINOLE COUNTY, OKALOOSA COUNTY, HILLSBOROUGH COUNTY, AND FLORIDA ASSOCIATION OF COUNTIES, INC.,	)	
Intervenors,	)	
vs.	)	
DEPARTMENT OF JUVENILE JUSTICE,	)	
Respondent.	)	

RECOMMENDED ORDER

On August 15 through 18, 2011, an administrative hearing in these consolidated cases was held in Orlando, Florida, before Lawrence P. Stevenson, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner Miami-Dade County:

Estephanie Resnick, Esquire
Cynthia Johnson-Stacks, Esquire
Miami-Dade County Attorney's Office
111 Northwest 1st Street, Suite 2810
Miami, Florida 33128

For Petitioner Santa Rosa County:

Angela J. Jones, Esquire
Thomas V. Dannheiser, Esquire
6495 Caroline Street, Suite C
Milton, Florida 32570

For Petitioner Alachua County:

Robert Livingston, Esquire
Alachua County Attorney General Office
Post Office Box 2877
Gainesville, Florida 32602

For Petitioner Orange County:

Linda Brehmer Lanosa, Esquire
Orange County Attorney's Office
201 South Rosalind Avenue, 3rd Floor
Post Office Box 1393
Orlando, Florida 32801

For Petitioner Pinellas County:

Carl E. Brody, Esquire
Christy Donovan Pemberton, Esquire
Pinellas County Attorney's Office
315 Court Street, 6th Floor
Clearwater, Florida 33756

For Petitioner Escambia County:

Charles V. Peppler, Esquire
Escambia County Attorney's Office
221 Palafox Place, Suite 430
Pensacola, Florida 32502

For Petitioner Hernando County:

Richard Appicello, Esquire
Hernando County Attorney's Office
20 North Main Street, Suite 462
Brooksville, Florida 34601

For Petitioner Broward County:

Adam Katzman, Esquire
Broward County Attorney's Office
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301-1826

For Intervenor City of Jacksonville:

Loree L. French, Esquire
City of Jacksonville
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

For Intervenor Bay County:

Terrell K. Arline, Esquire
Jennifer W. Shuler, Esquire
Toni L. Craig, Esquire
Bay County Attorney's Office
840 West 11th Street
Panama City, Florida 32401-2336

For Intervenor Brevard County:

Shannon L. Wilson, Esquire
Office of the County Attorney
2725 Judge Fran Jamieson Way
Building C, 3rd Floor
Viera, Florida 32940

For Intervenor Seminole County:

Susan E. Dietrich, Esquire
Arnold W. Schneider, Esquire
Seminole County Attorney's Office
1101 East First Street
Sanford, Florida 32771

For Intervenor Okaloosa County:

Gregory T. Stewart, Esquire
Carly J. Schrader, Esquire
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Post Office Box 11008
Tallahassee, Florida 32302

John R. Dowd, Esquire
Okaloosa County Attorney's Office
Post Office Box 404
901 Eglin Parkway
Shalimar, Florida 32579-0404

For Intervenor Hillsborough County:

Stephen M. Todd, Esquire
Hillsborough County Attorney's Office
Post Office Box 1110
Tampa, Florida 33601

For Intervenor Florida Association of Counties, Inc.:

Edward A. Dion, Esquire
Nabors, Giblin & Nickerson, P.A.
208 Southeast Sixth Street
Fort Lauderdale, Florida 33301

For Respondent Department of Juvenile Justice:

Brian Berkowitz, Esquire
Department of Juvenile Justice
Knight Building, Room 312V
2737 Centerview Drive
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue in these consolidated cases is whether the Department of Juvenile Justice (the "Department") assessed Petitioners and Intervenor counties for secure juvenile detention care for fiscal year 2008-2009 in a manner consistent

with the provisions of section 985.686, Florida Statutes, and Florida Administrative Code Rules 63G-1.001 through 63G-1.009.[1/]

PRELIMINARY STATEMENT

On April 12, 2010, the Department forwarded to the Division of Administrative Hearings ("DOAH") petitions for formal hearing filed by Miami-Dade County, Santa Rosa County, Alachua County, Orange County, and Pinellas County, all of which challenged the assessments for the cost of secure juvenile detention made by the Department for fiscal year 2008-2009. The cases were given DOAH Case Nos. 10-1893 (Miami-Dade), 10-1894 (Santa Rosa), 10-1895 (Alachua), 10-1896 (Orange), and 10-1945 (Pinellas) and assigned to the undersigned for the conduct of formal administrative hearings. On April 21, 2010, an order consolidating the cases for hearing was entered along with a notice of hearing for July 20 through 22, 2010.

On April 22, 2010, the Department forwarded to DOAH petitions for formal hearing filed by Escambia County and Hernando County, also contesting the Department's assessments for fiscal year 2008-2009. These cases were given DOAH Case Nos. 10-2194 and 10-2195, respectively, and assigned to the undersigned. By order dated May 3, 2010, these cases were consolidated for hearing with DOAH Case Nos. 10-1893 through 10-1896 and 10-1945.

On June 10, 2010, the Department forwarded to DOAH the petition for formal hearing filed by Broward County contesting the Department's assessments for fiscal year 2008-2009. This case was given DOAH Case No. 10-3166 and assigned to the undersigned. By order dated June 16, 2010, this case was consolidated for hearing with the other cases named above.

By order dated October 4, 2010, the City of Jacksonville's petition to intervene in the consolidated proceeding was granted. By orders dated February 2, 2011, the petitions to intervene filed by Seminole County, Brevard County, and Okaloosa County were granted. By order dated February 17, 2011, the petition to intervene of the Florida Association of Counties, Inc. was granted. By order dated June 17, 2011, Hillsborough County's petition to intervene was granted.

The final hearing was continued three times before being held on August 15 through 18, 2011, in Orlando. At the hearing, the Department presented the testimony of its employees Beth Davis, Vickie Jones Harris, Barbara Campbell, and Mark A. Greenwald. Okaloosa County presented the testimony of Richard E. Herring, an expert in Florida's legislative and appropriations processes. Bay County presented the testimony of its employee Sheila J. Faries and of Judy Perkins Huggins, a contractor who reviews juvenile secure detention charges for Bay County. Orange County presented the testimony of its employees

Yolanda Brown, Charles Green, and Maria Vargas, as well as the testimony of Judge Anthony H. Johnson, circuit Judge for the Ninth Judicial Circuit and administrative Judge for that circuit's Juvenile Division.

Several of the parties submitted pre-filed testimony and pre-filed exhibits that were accepted into evidence along with the exhibits offered at the final hearing. On October 26, 2011, the undersigned issued a Revised List of Admitted Exhibits that set forth the admitted exhibits and accepted testimony as follows:

Miami-Dade County

Pre-filed testimony of Maria Cristina Molina (including attached exhibits);

Pre-filed testimony of Morris Copeland (including attached exhibits);

Exhibits A through D attached to Miami-Dade County's Third Amended Petition, filed March 4, 2011.

Santa Rosa County

Affidavit of Susan Hoodless.

Alachua County

Pre-filed direct testimony of Annette Schwiebert.

Orange County

Joint Deposition Exhibits 1 through 57 (24, 27, 29, and 43 through 50 admitted under seal);

Orange County 58: deposition transcripts of Department witness Beth Davis;

Orange County 59: deposition transcript of Department witness Vickie Jones Harris;

Orange County 60: deposition transcript of Department witness Robert M. Dunn;

Orange County 61: deposition transcript of Department witness Mark A. Greenwald;

Orange County 62: deposition transcript of Department witness Shun-Yung Wang;

Orange County 63: deposition transcript of Department witness Barbara Campbell;

Pre-filed testimony of Charles Green (including attached exhibits);

Second updated affidavit of Yolanda Brown (including attached exhibit);

Amended affidavit of Maria Vargas (including attached exhibits);

Orange County Trial Exhibits 1 through 4, 7, 9 through 13, 15, and 17 through 31.

Pinellas County

Pre-filed testimony of Timothy Burns (including attached Exhibits A through R);

Pre-filed testimony of Wendy Neville (including attached Exhibit S);

Pre-filed Exhibits T through QQ;

Department's Response to Pinellas County's First and Second Request for Production;

Department's Answers to Pinellas County's First and Second Set of Interrogatories.

Escambia County

Pre-filed testimony of Cheryl Maher (including supplement filed on July 29, 2011);

Pre-filed testimony of Amy Lovoy;

Pre-filed Exhibits A through F, H through N, R and S.

Hernando County

Pre-filed testimony of Jean Rags (including attached exhibits);

Pre-filed testimony of Donna Moore;

Hernando County Trial Exhibits 1 through 4.

Broward County

Pre-filed direct testimony of Michael Elwell (including attached exhibits);

Broward County Trial Exhibit 1.

City of Jacksonville

Pre-filed testimony of Pamela Markham (including attached exhibits);

City of Jacksonville Trial Exhibits 7 through 9.

Bay County

Affidavit of Sheila Faries;

Affidavit of Judy Huggins;

Bay County Trial Exhibit 1.

Brevard County

Pre-filed testimony of Zoila Villanueva (including attached exhibits).

Seminole County

Written statement of Jean Jeffcoat;

Seminole County Trial Exhibits 1 through 9 and 11 through 13

Okaloosa County

Pre-filed direct testimony of Gary Stanford (including attached exhibits);

Okaloosa County Trial Exhibits 1 through 10 and Composite Exhibit 11.

Hillsborough County

Hillsborough County Trial Exhibits 1 through 3.

Department

Department Trial Exhibit 1.

The six-volume transcript of the hearing was filed at DOAH on October 11, 2011. By agreement of all the parties at the close of the hearing, the deadline for filing proposed recommended orders was set at 60 days after the filing of the transcript. On December 2, 2011, and January 19, 2012, orders were entered granting extensions in the time for filing proposed recommended orders. The latter order established February 13, 2012, as the final date for submission of proposed recommended orders. Proposed Recommended Orders were timely filed by the Department, the City of Jacksonville, and by the following

counties: Miami-Dade, Alachua, Orange, Pinellas, Escambia, Hernando, Broward, Bay, Brevard, Okaloosa, and Seminole.

FINDINGS OF FACT

Parties

1. The Department is the state agency responsible for administering the cost-sharing requirements of section 985.686, Florida Statutes, regarding secure detention care provided for juveniles.

2. With the exception of Intervenor Florida Association of Counties, Inc., the Petitioners and Intervenors (collectively referenced herein as the "Counties") are political subdivisions of the State of Florida. The specific counties that have petitioned or intervened in these proceedings are not "fiscally constrained" as that term is defined in section 985.686(2)(b), Florida Statutes.

3. Each county is required by section 985.686 to contribute its actual costs for predisposition secure detention services for juveniles within its jurisdiction. The Counties are substantially affected by the Department's determinations of the number of secure detention days that are predisposition, and by the Department's allocation of those days among the Counties, an allocation that further determines each county's share of the cost for pre-disposition secure detention. The Counties are

further substantially affected by the allocation method itself, which they assert is not authorized by section 985.686.

Statutory and rule framework

4. Section 985.686(1), Florida Statutes, provides that the "state and counties have a joint obligation, as provided in this section, to contribute to the financial support of the detention care provided for juveniles."

5. Section 985.686(2)(a), defines "detention care," for purposes of this section, to mean "secure detention."[2/] Section 985.03(18)(a), defines "secure detention" to mean "temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement."

6. Section 985.686(3), provides in relevant part that each county "shall pay the costs of providing detention care . . . for juveniles for the period of time prior to final court disposition. The department shall develop an accounts payable system to allocate costs that are payable by the counties."

7. In summary, section 985.686 requires each non-fiscally restrained county to pay the costs associated with secure detention during predisposition care, and the Department to pay the costs of secure detention during post-disposition care.[3/] The Department is charged with developing an accounts payable system to allocate costs payable by the counties.

8. Section 985.686(5), sets forth the general mechanism for this allocation process:

> Each county shall incorporate into its annual county budget sufficient funds to pay its costs of detention care for juveniles who reside in that county for the period of time prior to final court disposition. This amount shall be based upon the prior use of secure detention for juveniles who are residents of that county, as calculated by the department. Each county shall pay the estimated costs at the beginning of each month. Any difference between the estimated costs and actual costs[4/] shall be reconciled at the end of the state fiscal year.

9. Section 985.686(10), provides that the Department "may adopt rules to administer this section." Pursuant to this grant of authority, the Department promulgated Florida Administrative Code Rules 63G-1.001 through 63G-1.009, effective July 16, 2006.

10. Rule 63G-1.004 provides the detailed method by which the Department is to calculate the counties' estimated costs:

> (1) Each county's share of predisposition detention costs is based upon usage during the previous fiscal year, with the first year's estimates based upon usage during fiscal year 2004-05. Estimates will be calculated as follows:
>
> (a) All youth served in secure detention during the relevant fiscal year as reflected in the Juvenile Justice Information System will be identified;
>
> (b) Each placement record will be matched to the appropriate referral based upon the referral identification code. 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;

(c) The number of service days in secure detention is computed by including all days up to and including the date of final disposition for the subject referral.

(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.

(3) The estimated cost will be billed to the counties in monthly installments.

(4) Invoices are to be mailed on the first day of the month prior to the service period, so that an invoice for the August service period will be mailed on July 1.

11. Rule 63G-1.008 provides the method by which the Department is to reconcile the estimated payments with the actual costs of predisposition secure detention:

(1) On or before January 31 of each year, the Department shall provide a reconciliation statement to each paying county. The 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.

(2) If a county's actual usage is found to have exceeded the amount paid during the fiscal year, the county will be invoiced for the excess usage. The invoice will accompany the reconciliation statement, and shall be payable on or before April 1.

> (3) If a county's actual usage was less than the estimated amounts paid during the fiscal year, the county will be credited for its excess payments. Credit will be reflected in the April billing, which is mailed on March 1, and will carry forward as necessary.

12. Under the quoted rules, the Department determines an estimate for each county's share of predisposition secure detention costs. This estimate is provided to the counties prior to the start of the fiscal year in order to allow each county to "incorporate into its annual county budget sufficient funds" to pay for the costs of predisposition secure detention care for juveniles who reside in that county.

13. To prepare this estimate, the Department utilizes the county's actual usage of secure detention facilities for the most recently completed fiscal year.[5/] The amount of this usage is shown as that county's percentage of the total usage of predisposition secure detention care by all counties.

14. The resulting percentage for each county is then multiplied by the "cost of detention care as fixed by the legislature" to arrive at the estimated amount due for each county. Rule 63G-1.002(1) defines "cost of detention care" as "the cost of providing detention care as determined by the General Appropriations Act."

15. The term "cost of detention care" is used in rule 63G-1.004, which sets forth the method of calculating estimnated costs. The term is not used in rule 63G-1.008, which addresses the annual reconcilation by which the Department purports to arrive at the "actual cost of the county's usage" for the fiscal year.

16. The definition of "cost of detention care" references the Legislature's annual General Appropriations Act, which appropriates revenues for the operation of various state functions. An "appropriation" is "a legal authorization to make expenditures for specific purposes within the amounts authorized by law." § 216.011(1)(b), Fla. Stat. The General Appropriations Act for fiscal year 2008-2009 was House Bill 5001, codified as chapter 2008-152, Laws of Florida.

17. Within chapter 2008-152, Specific Appropriations 1073 through 1083 set forth the appropriations for the juvenile detention program. These items included the cost of operating the secure detention centers and identified specific funding sources for the program. These funding sources were the General Revenue Fund ("General Revenue"), the Federal Grants Trust Fund, the Grants and Donations Trust Fund, and an amount identified under the Shared County/State Juvenile Detention Trust Fund ("Shared Trust Fund"). Section 985.6015(2), states that the Shared Trust Fund "is established for use as a depository for

funds to be used for the costs of predisposition juvenile detention. Moneys credited to the trust fund shall consist of funds from the counties' share of the costs for predisposition juvenile detention."

18. A total of $30,310,534 was appropriated from General Revenue to the Department for the operation of secure detention centers. This amount was intended to cover the Department's costs in providing post-disposition secure detention services, including the state's payment of the costs for detention care in fiscally constrained counties. See § 985.686(2)(b) & (4), Fla. Stat.

19. A total of $99,583,854 was set forth as the appropriation for the Shared Trust Fund. This amount was not an "appropriation" as that term is defined by statute because it did not authorize a state agency to make expenditures for specific purposes. Rather, this number constituted the amount to be used in the preparation of the preliminary estimates that the Department provides to the counties for the purpose of budgeting their anticipated contributions toward the secure detention costs for the upcoming fiscal year. As will be discussed at length below, a refined version of this number was also improperly used by the Department as a substitute for calculating the counties' actual cost at the time of the annual reconciliation described in rule 63G-1.008.

20. As set forth in rule 63G-1.004, the Department determines the estimate, then it notifies the counties of the estimated amount. The counties make their payments in monthly installments.

21. Rule 63G-1.007 requires the Department to prepare a quarterly report for each county setting forth the extent of each county's actual usage. The counties receive their reports 45 days after the end of each quarter. Subsection (1) of the rule provides that the quarterly report "is to assist counties in fiscal planning and budgeting, and is not a substitute for the annual reconciliation or grounds for adjusting or withholding payment."

22. At the end of the fiscal year, and no later than January 31, the Department must prepare an annual reconciliation statement for each county, to reconcile the difference, if any, between the estimated costs paid monthly by the county and the actual cost of the county's usage during that period. If the county's actual cost is more or less than the estimated payments made during the fiscal year, the county will be credited or debited for the difference. Fla. Admin. Code R. 63G-1.008.

23. Because a county is billed prior to the start of the fiscal year, the Department's initial estimate obviously cannot be based on actual costs for that fiscal year. However, the amount ultimately owed by each county following the annual

reconciliation should assess the county's actual costs for predisposition secure detention care during that year, in accordance with section 985.686(5).

Prior DOAH litigation

24. The Department's manner of assessing the counties for predisposition secured detention services has been the subject of five prior DOAH cases, all of them involving Hillsborough County. Hillsborough Cnty. v. Dep't of Juv. Just., Case No. 07-4398 (Fla. DOAH Mar. 7, 2008; Fla. Dep't of Juv. Just. June 4, 2008)("Hillsborough I") dealt with the methodology used by the Department to determine the amount that Hillsborough County owed for predisposition secure detention services for fiscal year 2007-2008. Administrative Law Judge Daniel Manry found that the Department's practice of calculating a per diem rate for service days in secure detention was inconsistent with the Department's rule 63G-1.004(2). Instead of limiting Hillsborough County's contribution to a percentage of the amount "appropriated"[6/] by the Legislature to the Shared Trust Fund, the Department was including its own General Revenue appropriation in the calculation, which inflated the county's assessment. Hillsborough I at ¶ 24. Judge Manry's findings led the Department to conclude, in its Final Order, that the calculation of a "per diem" rate for the counties should be abandoned as inconsistent with rule 63G-1.004.

25. In a companion case to Hillsborough I, Hillsborough Cnty. v. Dep't of Juv. Just., Case No. 07-4432 (Fla. DOAH Mar. 10, 2008; Fla. Dep't of Juv. Just. June 4, 2008)("Hillsborough II"), Judge Manry dealt with Hillsborough County's challenge to the Department's determination of utilization days allocated to the county for predisposition care. In this case, Judge Manry found that the Department had failed to comply with the requirements of section 985.686(6), which provides:

> Each county shall pay to the department for deposit into the Shared County/State Juvenile Detention Trust Fund its share of the county's total costs for juvenile detention, based upon calculations published by the department with input from the counties. (Emphasis added).

26. The Department had allocated 47,714 predisposition utilization days to Hillsborough County, which was reduced to 47,214 after the reconciliation process. The county argued that the correct number of predisposition days was 31,008. The Department identified 16,206 challenged days under nine categories: contempt of court; detention orders; interstate compacts; pick up orders; prosecution previously deferred; transfer from another county awaiting commitment beds; violation of after care; violation of community control; and violation of probation. Hillsborough II, ¶¶ 25-27.

27. Judge Manry found that the Department had allowed input from the counties during the rulemaking workshops for

chapter 63G-1, but had "thwarted virtually any input from the County during the annual processes of calculating assessments and reconciliation." Id. at ¶ 28. The data provided by the Department to the county each year did not include final disposition dates, making it virtually impossible for the county to audit or challenge the Department's assessments. Judge Manry also found that the absence of disposition dates deprived the trier-of-fact of a basis for resolving the dispute over the nine categories of utilization days that the Department had categorized as "predisposition." Id. at ¶ 30.

28. Judge Manry rejected the Department's contention that the county's allegation of misclassification was a challenge to agency policy. He found that the issue of the correct disposition date was a disputed issue of fact not infused with agency policy or expertise that could be determined through conventional means of proof, including public records. Id. at ¶¶ 31-32. The Department failed to explicate "any intelligible standards that guide the exercise of agency discretion in classifying the nine challenged categories of utilization days as predisposition days." Id. at ¶ 34.

29. Judge Manry made the following findings of significance to the instant proceeding:

> 6. The trier-of-fact construes the reference to placement in Subsection 985.03(18)(a) to mean residential placement.

> Secure detention includes custody in a detention center for both predisposition and post-disposition care. Predisposition care occurs prior to adjudication or final disposition. Post-disposition care occurs after adjudication or disposition but prior to residential placement.
>
> 7. Post-disposition care also includes custody in a detention center after final disposition but prior to release. Although this type of post-disposition care comprises a small proportion of total post-disposition care, references to post-disposition care in this Recommended Order include care after final disposition for: juveniles waiting for residential placement and juveniles waiting for release. (Emphasis added).

30. Judge Manry found that "secure detention after final disposition, but before residential placement for the charge adjudicated, is post-dispositional care." Id. at ¶ 36. He recommended that the Department enter a final order assessing the county for the costs of predisposition care within the county "in accordance with this Recommended Order and meaningful input from the County." The Department adopted Judge Manry's recommendation.

31. In Hillsborough Cnty. v. Dep't of Juv. Just., Case No. 09-1396 (Fla. DOAH June 30, 2009; Fla. Dep't of Juv. Just. Sept. 17, 2009) ("Hillsborough III"), the dispute between Hillsborough County and the Department centered on 9,258 detention days that the Department had assigned to the county for which no disposition dates were available. Hillsborough III

at ¶ 2. The Department took the position that it could identify disposition dates for all juveniles who had been transferred to its care and supervision, and that the "no date" cases indicated that those juveniles had not been transferred to the Department and were therefore the responsibility of the county. Id. at ¶¶ 4-5. Hillsborough County contended that any court order in a juvenile detention case is a dispositional order, after which the Department becomes responsible for the expenses related to retaining the juvenile. Id. at ¶ 5.

32. Administrative Law Judge William F. Quattlebaum found that neither section 985.686 nor previous Final Orders suggest that fiscal responsibility for a juvenile is transferred to the Department upon the issuance of any court order. Id. at ¶ 6. He concluded that it is

> . . . reasonable to presume that the [Department] would have disposition information about juveniles who had been committed to [its] custody, and it is likewise reasonable to believe that, absent such information, the juveniles were not committed to the [Department's] custody. The [Department] has no responsibility for the expenses of detention related to juveniles who were not committed to the [Department]'s care and supervision.

Id. at ¶ 13.

33. However, the evidence also indicated that in some of the "no date" cases, the Department's records identified addresses of record that were facilities wherein the Department

maintained offices. Id. at ¶¶ 7-8. Judge Quattlebaum recommended that the Department amend the annual reconciliation to give the Department responsibility for the disputed cases which lacked disposition dates but included Department addresses, and to give Hillsborough County responsibility for those cases with no disposition dates and no Department addresses.

34. In its Final Order, the Department accepted the recommendation to the extent that cases lacking disposition dates were properly assigned to Hillsborough County. However, the Department concluded that "there is no legal authority to assign responsibility for detention stays based upon proximity to a Department office location," and therefore declined to amend the annual reconciliation as recommended by Judge Quattlebaum.

35. In Hillsborough Cnty. v. Dep't of Juv. Just., Case No. 09-4340 (Fla. DOAH Dec. 18, 2009; Fla. Dep't of Juv. Just. Jan. 20, 2010) ("Hillsborough IV"), the issue was the Department's authority to issue multiple annual reconciliations. On January 30, 2009, the Department issued an annual reconciliation to Hillsborough County along with an invoice for a sizable credit due the county for having made estimated payments in excess of its actual costs for fiscal year 2007-2008. The county did not object to this reconciliation

statement. Hillsborough IV at ¶ 8. On February 24, 2009, the Department issued a second annual reconciliation that increased the county's assigned predisposition days and decreased the county's credit. Id. at ¶ 9. On March 18, 2009, the county sent a letter to the Department requesting clarification as to the two annual reconciliations. The Department did not respond to the letter. Id. at ¶ 10.

36. On May 1, 2009, the county sent a second letter to the Department disputing a portion of the assigned utilization days. The Department did not respond to the letter. However, on May 14, 2009, the Department issued a third annual reconciliation to the county that again increased its assigned predisposition days and reduced its credit. Id. at ¶ 11. On June 4, 2009, the Department issued a fourth annual reconciliation. This reconciliation decreased the county's assigned predisposition days but nonetheless again reduced the county's credit. Id. at ¶ 12. On July 17, 2009, the Department finally responded to the county's May 1, 2009, letter by advising the county to file an administrative challenge to the allocation of predisposition days. Id. at ¶ 13.

37. With these facts before him, Judge Quattlebaum reviewed section 985.686 and the Department's rules and then arrived at the following conclusions:

24. There is no authority in either statute or rule that provides the [Department] with the authority to issue multiple annual reconciliation statements to a county. The [Department] is required by Florida Administrative Code Rule 63G-1.008 to issue an annual reconciliation statement on or before January 31 of each year. The rule clearly requires that March bills (payable in April) reflect any excess payment credit due to a county and that any additional assessment related to excess usage must be paid by a county on or before the following April 1.

25. Absent any evidence to the contrary, the annual reconciliation statement issued pursuant to the rule is final unless successfully challenged in an administrative proceeding....

* * *

28. At the hearing, the parties suggested that the issuance of multiple annual reconciliation statements is the result of the resolution of objections filed by counties in response to the annual reconciliation statement. The resolution of such objections can result in additional costs allocated to another county. There was no evidence that counties potentially affected by resolution of another county's objections receive any notice of the objections or the potential resolution. The county whose allocated costs increase through the resolution of another county's objections apparently receives no notice until the [Department] issues another annual reconciliation statement for the same fiscal period as a previous reconciliation statement.

* * *

30. Perhaps the most efficient resolution of the situation would be for the

> [Department] to require, as set forth at Section 120.569, Florida Statutes (2009), that protests to quarterly reports and annual reconciliations be filed with the agency. Such protests could be forwarded, where appropriate, to DOAH. Related protests could be consolidated pursuant to Florida Administrative Code Rule 28-106.108. Where the resolution of the proceedings could affect the interests of a county not a party to the proceeding, the county could be provided an opportunity to participate in the proceeding (and be precluded from later objection) pursuant to Florida Administrative Code Rule 28-106.109.

38. As is apparent from the lengthy inset quotation, Hillsborough IV touched upon the subject of the Department's "tethering" of the counties, explained at Findings of Fact 50-53, infra, though the validity of the practice was not directly at issue. Judge Quattlebaum addressed the due process concerns in counties' having no notice of administrative proceedings that could result in the allocation of additional costs to those counties, but did not address the underlying issue of the Department's authority to reallocate costs in the manner described.

39. Judge Quattlebaum recommended that the Department issue a Final Order adopting the January 30, 2009, annual reconciliation for fiscal year 2007-2008. The Department adopted the recommendation and directed that "all successive reconciliations for that fiscal year shall be disregarded and expunged."

40. In Hillsborough Cnty. v. Dep't of Juv. Just., Case No. 09-3546 (Fla. DOAH Feb. 26, 2010; Fla. Dep't of Juv. Just. Mar. 23, 2010) ("Hillsborough V"), the main issue was Hillsborough County's contention that the Department had unilaterally and without authority increased the counties' per diem rate for detention care. The undersigned found that the Department had abandoned the calculation of a per diem rate in light of the findings in Hillsborough I, and that the increased "per diem" rate alleged by the county was simply the result of the Department's recalculation of the counties' estimated costs in accordance with its own rule.[7/]

Fiscal year 2008-2009 assessments and reconciliation

41. By letter dated June 3, 2008, the Department issued its calculation of the amounts due from each county for their estimated share of the predispositional detention costs for fiscal year 2008-2009, which would run from July 1, 2008, through June 30, 2009. As noted at Finding of Fact 19, supra, the predispositional budget was estimated at $99,583,854. The estimate was based on county utilization during the most recently completed fiscal year, 2006-2007, and the amount identified in the chapter 2008-152, Laws of Florida.

42. The Department made the following estimates for the Counties' shares of predispositional days and costs:

	Days	Percentage of Days	Estimated Cost
Miami-Dade	47,450	8.56%	$8,522,140
Santa Rosa	5,213	0.94%	$936,268
Alachua	10,957	1.98%	$1,967,905
Orange	43,330	7.81%	$7,782,177
Pinellas	32,627	5.88%	$5,859,892
Escambia	15,044	2.71%	$2,701,940
Hernando	2,978	0.54%	$534,856
Broward	38,490	6.94%	$6,912,901
City of Jacksonville[8/]	28,957	5.22%	$5,200,750
Bay	5,409	0.98%	$971,470
Brevard	13,760	2.48%	$2,471,331
Seminole	12,857	2.32%	$2,309,150
Okaloosa	4,612	0.83%	$828,327
Hillsborough	44,577	8.04%	$8,006,142

43. The Counties incorporated the Department's estimate into their budgets and made monthly payments to the Department.

44. By letter dated December 7, 2009, the Department issued its annual reconciliation for fiscal year 2008-2009. As noted above, the purpose of the annual reconcilation is to "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."

45. The annual reconcilation set forth the following as the "Actual Predispositional Days" and the "Share of Trust Fund Expenditures" for the Counties, along with the "Difference Debit/(Credit)" between the estimated sums already paid by the Counties and the amount set forth in the annual reconciliation. Those amounts were as follows:

	Days	Percentage of Days	Share of Trust Fund
Miami-Dade	38,925	11.45%	$10,926,117
Santa Rosa	2,555	0.75%	$717,180
Alachua	5,511	1.62%	$1,546,919
Orange	25,286	7.44%	$7,097,695
Pinellas	19,218	5.65%	$5,394,428
Escambia	6,734	1.98%	$1,890,211
Hernando	1,383	0.41%	$388,203
Broward	31,339	9.22%	$8,796,752
City of Jacksonville	21,246	6.25%	$5,963,681
Bay	3,824	1.13%	$1,073,384
Brevard	10,598	3.12%	$2,974,823
Seminole	8,944	2.63%	$2,510,551
Okaloosa	3,613	1.06%	$1,014,157
Hillsborough	27,120	7.98%	$7,612,493

46. The Department's letter advised the counties as follows, in relevant part:

> . . . Any counties that have a debit amount owed will find enclosed with this correspondence an invoice for that amount. This amount is due by March 1, 2010. A credit amount . . . means the county overpaid based on their utilization and a credit invoice is enclosed with this correspondence. (If the credit amount is larger than the amount currently being paid by the county, the credit will be applied to future invoices until the credit is applied in total.) It is critical that all credits be taken prior to June 30, 2010. . . . (emphasis added).

47. In comparing the estimated costs with the "Share of Trust Fund Expenditures," an untutored observer might expect a correlation between the absolute number of predisposition days and the money assessed by the Department. However, it is apparent that no such correlation was present in the Department's calculations. Dade County, for example, had 8,525 fewer actual predisposition days than the Department estimated at the outset of fiscal year 2008-2009, yet was assessed $2,403,976.89 in the annual reconciliation over and above the $8,522,140 in estimated payments that the county had already made over the course of the year. (For all 67 counties, the Department had estimated 538,836 predispositional days for the fiscal year. The actual number of predispositional days was 339,885.)

48. The correlation, rather, was between a county's percentage of the total number of predispositional days and the money assessed. Though its actual number of days was less than estimated, Dade County's percentage of predispositional days was 2.89% higher than its estmated percentage. Therefore, the Department presented Dade County with an annual reconcilation assessment of $2.4 million.

49. The correlation between percentage of days and the final assessment was caused by the Department's practice of treating the Shared Trust Fund appropriation of $95,404,579[9/] as an amount that the Department was mandated to raise from the counties regardless of whether the counties' actual predisposition days bore any relation to the estimate made before the start of the fiscal year.

50. At the final hearing, the Department's representatives made it clear that the Department believed that the Legislature required it to collect the full Shared Trust Fund appropriation from the counties. Reductions in actual usage by the counties would have no bearing on the amount of money to be collected by the Department.

51. The Department views its duty as allocating costs among the counties, the "actual cost" being the Legislature's appropriation to the Shared Trust Fund. Beth Davis, the Department's Director of the Office of Program Accountability,

testified that if all the counties together only had one predispositional secure detention day for the entire year, that day would cost the county in question $95 million.[10/]

52. In practice, the Department treated the Shared Trust Fund "appropriation" as an account payable by the counties. In this view, the appropriation is the Department's mandate for collecting the stated amount from the counties by the end of fiscal year 2008-2009, even while acknowledging that the Shared Trust Fund number in the General Appropriations Act was no more than an estimate based on the actual usage for the most recently completed fiscal year, which in this case was 2006-2007.

53. Because the Department felt itself bound to collect from the counties the full amount of the Shared Trust Fund appropriation, any adjustment to one county's assessment would necessarily affect the assessments for some or all of the other counties. A downward adjustment in Orange County's assessment would not effect a reduction in the absolute number of dollars collected by the Department but would shift Orange County's reduced burden proportionally onto other counties. The Department has "tethered" the counties together with the collective responsibility to pay $95,404,579 for fiscal year 2008-2009.

54. Richard Herring is an attorney and longtime legislative employee, including 16 years as a deputy staff

director to the House and Senate Appropriations Committees, and was accepted as an expert in the appropriations process. Mr. Herring was knowledgeable and persuasive as to the appropriations process and the circumstances surrounding the passage of the legislation at issue in this proceeding.

55. Mr. Herring testified as to a "disconnect" in the way the Department treats the Shared Trust Fund program. The Shared Trust Fund appropriation is not an amount of money; rather, it is an authorization to spend money from that trust fund. Mr. Herring found that the Department mistakenly "treats appropriations almost as though it were a revenue-raising requirement." Mr. Herring could not think of any other example in which a state legislative appropriation mandates that another governmental entity such a county spend its own funds.[11/]

56. The Department allocates 100% of the Shared Trust Fund appropriation to the counties and collects that amount, even though section 985.686(5) limits the Department's collections to "actual costs." Mr. Herring clearly and correctly opined that the Appropriations Act cannot amend a substantive law on any subject other than appropriations. Therefore, the Department cannot rely on the appropriation made in chapter 2008-152, Laws of Florida, as authority for substituting the appropriated amount for the "actual costs" that the substantive statutory provision allows the Department to collect.

57. Mr. Herring found that it is "a huge stretch to say an appropriation means that I will, no matter what, collect that amount of money." He concluded:

> [O]ther than this program, I'm not aware of any place in the budget where somebody takes an appropriated amount, where it's not another State agency involved, and tries to true up at the end of the year to make sure that every penny of that . . . authorization to expend, that the cash has come in to match the authorization.
>
> * * *
>
> Again, an appropriation is not an authorization to levy taxes, fees, fines. It's not an authorization to raise revenues, to collect revenues. It may provide, where there are double budgets between two agencies or within an agency, it may be authority to move money from one pot within the State treasury . . . to another. But to go out and extract money from someone who's not a State agency, who's not subject to receiving appropriation, I don't know any place else that we do that. And I can't come up with another example.

Fiscal year 2008-2009 challenges

58. In a letter to the counties dated January 26, 2010, Ms. Davis wrote as follows, in relevant part:

> I am writing this letter to ensure everyone understands the proper procedure for handling any challenges to the annual reconciliation data sent to you in December 2009 for FY 2008-09 and any future year's reconciliation. As a result of the State of Florida, division of Administrative Hearings (DOAH) challenge in case no. 09-4340 between Hillsborough County (Petitioner) and the Department of Juvenile Justice (Respondent),

> the reconciliation completed for FY 2008-09 is considered "final" and adjustments can only be made to the reconciliation using the following steps.
>
> * Counties have 21 days from receipt of the reconciliation to file their challenges to the reconciliation with the Department.
>
> * The Department will review the challenges and determine if any adjustments need to be made and which counties will be affected by those potential changes. All affected counties will be notified of the potential adjustments even if those counties did not submit a challenge.
>
> * If challenges to the reconciliation cannot be resolved with the concurrence of all affected counties, the Department will file a request for a hearing with DOAH.
>
> * Affected counties will be able to present their case regarding the adjustments at the hearing. . . .

59. Florida Administrative Code Rule 63G-1.009 set forth the Department's dispute resolution process. It provided that the quarterly report "marks the point at which a county may take issue with the charges referenced in the report," but that such an objection was not a basis for withholding payment. All adjustments based on a county's objections to quarterly reports would be made in the annual reconciliation. Fla. Admin. Code R. 63G-1.009(1). Though the rule was silent as to counties' ability to file challenges or disputes to the annual reconciliation, the Department interpreted the rule as allowing such challenges.

60. Twelve counties, Pasco, Sarasota, Brevard, Lee, Polk, Broward, Santa Rosa, Pinellas, St. Johns, Hillsborough, Hernando, and Miami-Dade, filed disputes using the form prescribed by the Department, providing specific reference to the disputed charges and setting forth specific charges for the Department to reconsider.

61. The remaining counties did not file challenges to the annual reconciliation. At least some of these counties, including Orange, Alachua and Escambia, had already accepted their overpayment credit in the manner required by the Department's December 7, 2009 letter. See Finding of Fact 46, supra.

62. The record contains letters that Ms. Davis sent to Broward, Hernando, Hillsborough, Pinellas, and Santa Rosa Counties on different dates in January and February 2010, but containing substantially the same text. The letter sent to the deputy director of Broward County's human resources department, dated February 19, 2010, is representative:

> The Department has received challenges to the 2008-2009 reconciliation from 12 counties, including your challenge. In keeping with the Final Order from DOAH case no. 09-4340 [Hillsborough IV] the Department is evaluating all of the challenged assessments. If the Department determines there are any adjustments that need to be made, we will attempt to reach agreement with all of the counties affected by the changes. However, if we cannot reach

> agreement, the Department will combine all of the challenges and request an administrative hearing from the DOAH at which all of the issues can be resolved.
>
> Because of the number of challenges involved, and time constraints in working on next year's budget, we anticipate the review process taking about 30 days. This time period exceeds the general requirement for referring challenges to DOAH for those counties that have requested an administrative review. We are asking that the counties seeking administrative review will allow the Department additional time. If after the review it is necessary to proceed with an administrative hearing, we will notify all potentially affected counties so that one final resolution can be reached in a timely manner.

63. The Department reviewed the disputes filed by eleven of the twelve counties. In reviewing the disputes, the Department looked only at challenges to specific cases and did not consider broader policy disputes raised by the counties. Ms. Davis testified that Miami-Dade's dispute was not reviewed because Miami-Dade failed to include specific individual records. Ms. Davis stated that Miami-Dade was making a conceptual challenge not contemplated by rule 63G-1.009.

64. Barbara Campbell, the Department's data integrity officer, testified that she reviewed every record that was disputed by a county. Ms. Campbell stated that her review for Hillsborough County alone took about a month.

65. Hillsborough County disputed 50,528 days in 6,963 entries for the following reasons: adults in juvenile status (493 days), charges not disposed (22,495 days), invalid disposition end date (5 days), non-adjudicatory charges (2,987 days), extended period of detention (763 days), invalid zip code (352 days), invalid address (63 days), out of county (88 days), institutional address (1,560 days), escape after disposition (78 days), guardian (21,552 days), transfer after adjudication (45 days), no criminal charge (13 days), and duplicated entry (34 days).

66. Ms. Campbell concluded that Hillsborough County should remain responsible for 45,873 of the rejected 50,528 days. Despite Ms. Campbell's conclusion, the annual reconciliation assessed Hillsborough County for only 27,120 days. This discrepancy was not explained at the hearing.

67. Ms. Campbell testified that one of the corrections she made for Hillsborough County related to the waiting list for placement of juveniles in committed status. At that time, the waiting list was used to determine the commitment date for billing purposes, but Ms. Campbell found that the list contained commitment dates that were several days after the actual commitment dates. This error resulted in a substantial number of extra days being billed to Hillsborough County.[12/]

68. Ms. Campbell testified that this sizable error as to Hillsborough County did not prompt a review of the records of all counties to determine if the error was across the board. The Department lacked the time and manpower to perform such a review for all counties. The Department was already stretched thin in reviewing the specific challenges made by the counties.

69. In a letter to the counties dated March 23, 2010, Ms. Davis wrote as follows, in pertinent part:

> The Department has concluded it [sic] analysis of challenges submitted by counties for the 2008-09 final reconciliation for detention utilization. A total of twelve counties submitted challenges. After reviewing all the data, resulting adjustments affect a total of 45 counties, ten of which are fiscally constrained.
>
> Enclosed with this letter is a document outlining the specifics regarding adjustments as they pertain to your county. For counties that filed a challenge with the Department, each type of dispute category is addressed. Counties subsequently affected by the original twelve counties' challenges are impacted by either address corrections and/or as a result of their percentage of the total utilization being changed by adjustments made. An adjustment to a county's percentage of utilization occurs when days challenged are subsequently found to be the responsibility of the State or another county. Changes made based on address corrections are listed on the enclosed disc, if applicable to your county.
>
> Each county is asked to review the adjustments and respond back to the Department indicating agreement or disagreement with the findings. If a county

> has issue with the proposed adjustments they will need to file a petition with the Department to initiate proceedings with the Division of Administrative Hearings pursuant to 28-106-201 [sic] Florida Administrative Code. For the few counties that have already filed a petition with the Department, still complete the attached form and return to the Department but an additional petition is not required. Responses from the counties must be postmarked by April 9, 2010. . . .

70. Ms. Davis' March 23, 2010, letter was the first notice given to non-disputing counties by the Department that twelve counties had filed disputes to the annual reconciliation. Thus, counties that believed they had closed their ledgers on fiscal year 2008-2009 were forced to reopen their books to deal with the Department's "adjustments" to the amounts of their final annual reconciliations.

71. Attached to the letter was a spreadsheet containing the "08-09 Pending Challenge Adjustments" containing the following information for the Counties:

	Adjusted Days	Adjusted Percentage	Share of Trust Fund
Miami-Dade	38,944	11.77%	$11,229,123
Santa Rosa	1,980	0.60%	$570,914
Alachua	5,581	1.67%	$1,589,043
Orange	27,048	8.17%	$7,799,027
Pinellas	15,523	4.69%	$4,475,906
Escambia	6,734	2.04%	$1,941,683

Hernando	1,327	0.40%	$382,628
Broward	31,231	9.44%	$9,005,154
City of Jacksonville	21,300	6.44%	$6,141,647
Bay	3,830	1.16%	$1,104,343
Brevard	8,816	2.66%	$2,542,008
Seminole	8,965	2.71%	$2,584,970
Okaloosa	3,613	1.09%	$1,041,773
Hillsborough	22,465	6.79%	$6,477,564

72. In addition to making adjustments to the accounts of the challenging counties, the Department modified the amounts set forth in the annual reconciliation for all 38 non-fiscally constrained counties.[13/] A total of 9,010 days were reclassified as post-dispositional and therefore shifted from the counties' to the Department's side of the ledger. This shift did nothing to lessen the overall burden on the counties in terms of absolute dollars because the overall amount the Department intended to collect remained $95,404,579.

73. Of the twelve counties that challenged the annual reconciliation, five did not contest the Department's adjustment and are not parties to this proceeding: Pasco, Sarasota, Lee, Polk, and St. Johns. The record does not indicate whether these counties notified the Department that they accepted the adjustment.

74. Four counties that challenged the annual reconciliation, and are parties to this proceeding, notified the Department that they accepted the adjustment: Pinellas, Brevard, Hillsborough, and Santa Rosa. However, because all affected counties did not accept the adjustments, the Department did not refund monies to the counties that were awarded a credit by the adjustment. In correspondence with Pinellas County's Timothy Burns, Ms. Davis stated that the credit set forth in the adjustment would not be applied to the county's account "until the final decisions from the DOAH hearing."

75. At the hearing, Ms. Davis explained the Department's action as follows:

> Each county's utilization is considered a percentage of the total utilization and that percentage is multiplied by the expenditures. So if you change one number in that mathematical calculation, it has a rippling effect and will affect the other-- in this case it's 45 counties. So all of the counties had to accept those changes and agree to the modifications, those pending adjustments, if we were going to modify the reconciliation, the agency's final action.

76. To restate, the following are the estimates, the annual reconciliation amounts, and the adjustment amounts for each County:

Miami-Dade:	47,450	8.56%	$8,522,140
	38,925	11.45%	$10,926,117
	38,944	11.77%	$11,229,123

Santa Rosa:	5,213	0.94%	$936,268
	2,555	0.75%	$717,180
	1,980	0.60%	$570,914
Alachua:	10,957	1.98%	$1,967,905
	5,511	1.62%	$1,546,919
	5,581	1.67%	$1,589,043
Orange	43,330	7.81%	$7,782,177
	25,286	7.44%	$7,097,695
	27,048	8.17%	$7,799,027
Pinellas	32,627	5.88%	$5,859,892
	19,218	5.65%	$5,394,428
	15,523	4.69%	$4,475,906
Escambia	15,044	2.71%	$2,701,940
	6,734	1.98%	$1,890,211
	6,734	2.04%	$1,941,683
Hernando	2,978	0.54%	$534,856
	1,383	0.41%	$388,203
	1,327	0.40%	$382,628
Broward	38,490	6.94%	$6,912,901
	31,339	9.22%	$8,796,752
	31,231	9.44%	$9,005,154

City of Jacksonville	28,957	5.22%	$5,200,750
	21,246	6.25%	$5,963,681
	21,300	6.44%	$6,141,647
Bay	5,409	0.98%	$971,470
	3,824	1.13%	$1,073,384
	3,830	1.16%	$1,104,343
Brevard	13,760	2.48%	$2,471,331
	10,598	3.12%	$2,974,823
	8,816	2.66%	$2,542,008
Seminole	12,857	2.32%	$2,309,150
	8,944	2.63%	$2,510,551
	8,965	2.71%	$2,584,970
Okaloosa	4,612	0.83%	$828,327
	3,613	1.06%	$1,014,157
	3,613	1.09%	$1,041,773
Hillsborough	44,577	8.04%	$8,006,142
	27,120	7.98%	$7,612,493
	22,465	6.79%	$6,477,564

77. Overall, the Department had estimated there would be 538,836 predisposition utilization days for all counties. The actual number of predisposition days indicated in the annual

reconciliation was 339,885, some 198,951 fewer days than estimated. The number of actual days was further decreased to 330,875 in the Department's March 23, 2010, adjustment.

78. Nonetheless, the absolute number of dollars assessed by the Department against the counties remained unchanged because the only variable in the Department's formula for ascertaining a county's "actual costs" was the county's percentage of the total number of predisposition days. The $95 million set forth in the General Appropriations Act for the Shared Trust Fund remained unchanged. Thus, even if a county's actual number of predisposition days was several thousand fewer than the Department originally estimated, the county's assessment could be higher than the estimate because that lesser number of days constituted a higher percentage of the overall number of predisposition days. The City of Jacksonville, for example, was found by the adjustment to owe $940,897 more than the original estimate despite having actual usage that was 7,657 days fewer than the original estimate.

79. The Counties forcefully argue that Department's use of the General Appropriations Act as a substitute for calculating the counties' actual costs results in a gross disparity between the amounts per day paid by the state and those paid by the Counties for the same services at the same facilities, echoing the argument made by Hillsborough County in Hillsborough V.

80. Robert M. Dunn, the Department's director of policy development for detention services, testified as follows:

> Q. But in terms of the actual cost of detention, there's no difference in the cost of a predisposition detention day and a post-disposition detention day?
>
> A. None. They receive the same services: food, clothing, supervision, mental health, medical, all of those issues. Every youth receives the same services in detention.

81. Ms. Davis testified that the General Appropriations Act provided the Department with General Revenue sufficient to cover roughly 20% of the cost of all secure detention.[14/] Ms. Davis conceded that approximately 38% of the secure detention utilization days were post-disposition days that were the Department's responsibility. She further conceded that through the Shared Trust Fund the counties are paying the 18% difference for the state's portion of secure detention.

82. Evidence introduced at the hearing established a downward trend in the use of predisposition detention utilization since fiscal year 2005-2006, but no corresponding decrease in the amount that the counties pay for detention services.

83. Mr. Herring, the appropriations expert, testified that as a result of the manner in which the Department allocates costs, counties pay approximately $284 per day for detention services, whereas the state pays only $127 per day.

84. Mr. Burns, bureau director of Pinellas County's Department of Justice and Consumer Services, calculated that an average per diem rate for all detention days, predisposition and post-disposition, would be $229.56.

85. Ms. Davis testified that if the utilization ratio and the budget ratio were the same--in other words, if the Legislature fully funded the state's share of detention services--then the per diem rates for the counties and the Department would be almost the same.

86. Despite the fact that the counties were partially subsidizing the state's share of secure detention for juveniles, the Department nonetheless reverted $9,975,999 of unspent General Revenue funds back to the state's general revenue in fiscal year 2008-2009. Of that amount, approximately $874,000 had been appropriated for secure detention.

87. Section 985.686(3) requires the counties to pay the costs of providing detention care for juveniles prior to final court disposition, "exclusive of the costs of any pre-adjudicatory nonmedical educational or therapeutic services and $2.5 million provided for additional medical and mental health care at the detention centers." (Emphasis added).

88. The underscored language was added to the statute by section 11, chapter 2007-73, Laws of Florida, the appropriations

implementing bill for fiscal year 2007-2008. Vickie Joan Harris, the Department's budget director, testified that the Legislature appropriated an additional $2.5 million for medical and mental health care in 2007-2008, but that no additional money has been appropriated for those services since that fiscal year. For fiscal year 2008-2009, the counties shared these costs with the Department.

89. The Counties are correct in pointing out that the cost of a utilization "day" is the same whether it occurs predisposition or post-disposition, and their desire for a per diem basis of accounting is understandable from a fiscal planning perspective. If the Department announced a per diem rate at the start of the fiscal year, then a county could roughly calculate its year-end assessment for itself without the sticker shock that appears to accompany the annual reconciliation.

90. However, there are two obstacles to such an accounting method, one practical, one the product of the Department's purported understanding of the term "actual cost" as used in section 985.686(5). The practical objection is that the actual cost of maintaining and operating the Department's secure detention system is not strictly related to the number of days that juveniles spend in detention facilities.

91. Robert M. Dunn, the Department's director of policy development for detention services, testified as follows:

> For whatever reasons, detention population has decreased significantly over the last few years. However, we have to maintain the capability of providing adequate and proper services for 2,007 beds.
>
> In our system, we do not staff centers based on the number of beds or the number of youth who are in the center. We typically follow a critical post staffing process. We know that within center, there are certain posts that have to be manned 24/7, such as intake. We have to be able to provide staff to perform intake duty should a youth be delivered to the center for detention. We have to provide someone in our master control unit 24/7.
>
> Those people are responsible for outside communications, directing staff to where they are needed within the center, answering the phones inside the center for requests for assistance, monitoring the camera system to provide assistance. So that position, that post has to be staffed 24/7, whether we have one kid in the center or 100 kids. It's irrelevant.

92. Mr. Dunn went on to describe many other fixed costs of operating a secure detention facility for juveniles. He also discussed the Department's ongoing efforts to identify redundant facilities and streamline the program in light of falling usage, but the point remains that the Department's actual costs do not fluctuate significantly due to usage. Simply keeping the doors open carries certain costs whether one child or 100 children

come into the facility, and a pure per diem assessment approach might not cover those costs.

93. While the evidence establishes that there is a significant degree of county subsidization of the state's share of juvenile detention costs, there is a lack of credible evidence that a pure per diem approach would capture a given county's "actual costs" in keeping with the mandate of section 985.686.[15/]

94. It is apparent that the Counties have seized on the per diem concept not merely because it was the measure used by the Department prior to Hillsborough I, but because the system used for fiscal year 2008-2009 gave the Counties no way to even roughly predict their annual expenses for predisposition secure juvenile detention.

95. At the start of the fiscal year, a non-fiscally constrained county received an estimate of its predisposition days and its estimated portion of the Shared Trust Fund. The county made monthly payments based on those estimates. As the year progressed, it became apparent to the county that its actual usage was proving to be far less than the estimate. The annual reconciliation confirmed that the county had fewer predisposition days than the Department had estimated, which led the county to expect a refund. In defiance of that expectation, the county was presented with a bill for additional assessments.

In the case of Miami-Dade and Broward Counties, the additional bill was for millions of dollars despite the fact that their actual usage was several thousand days fewer than the Department's estimate. The Counties were, not unreasonably, perplexed by this turn of events.

96. This perceived anomaly points to the second obstacle to the Counties' proposed per diem accounting method: the Department's working definition of "actual costs" is unrelated to anything like a common understanding of the term "actual costs." It is a fiction that renders nugatory any effort by the Counties to limit their assessed contributions to the Shared Trust Fund to the money that was actually spent during the fiscal year. As to fiscal year 2008-2009, the Department simply made no effort to ascertain the counties' actual costs or, if it did, it failed to disclose them to the counties.

97. "One of the most fundamental tenets of statutory construction requires that the courts give statutory language its plain and ordinary meaning, unless words are defined in the statute or by the clear intent of the Legislature." City of Venice v. Van Dyke, 46 So. 3d 115, 116 (Fla. 1st DCA 2010), citing Reform Party of Fla. v. Black, 885 So. 2d 303, 312 (Fla. 2004). The Legislature did not define the term "actual cost" in section 985.686. "Actual cost" is not a term of art.[16/] The Florida Statutes are replete with uses of the term "actual cost"

that rely on the common meaning of the words and do not attempt further definition.[17/] Those few sections that do provide definitions of "actual cost" indicate that the Legislature is capable of limiting that common term when appropriate to its purposes.[18/] Nothing in Section 985.686 gives any indication that the Legislature intended the words "actual costs" to carry anything other than their plain and ordinary meaning.

98. By statute, the Department is obligated to reconcile "any difference between the estimated costs and actual costs . . . at the end of the state fiscal year." § 985.686(5), Fla. Stat. By rule, this reconciliation is to be performed on a county by county basis:

> On or before January 31 of each year, the Department shall provide a reconciliation statement to each paying county. The 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.

Fla. Admin. Code R. 63G-1.008(1).

99. Nothing in the statute or the implementing rules authorizes the Department to base its annual reconciliation on the anything other than actual costs.

100. Section 985.686(5) speaks in terms of the individual county, not in terms of "counties" as a collective entity. Rule 63G-1.008(1) states that the Department will provide a

reconciliation statement to "each paying county." That statement must reflect the difference between the estmated costs "paid by the county during the past fiscal year and the actual cost of the county's usage during that period." Like the statute, the rule speaks in terms of the individual county; the rule does not purport to authorize the Department to treat the 67 counties as a collective entity. Neither the statute nor the rule supports the rationale that the Shared Trust Fund liability of one county should in any way depend upon the costs incurred by any other county. At the end of the fiscal year, the amount collected in the Shared Trust Fund should be no more or less than the amounts of the counties' actual costs.

101. Nothing in the statute or the implementing rules authorizes the Department to tether the counties together with the collective responsibility to pay $95,404,579 for fiscal year 2008-2009, as opposed to paying a reconciled amount based on each county's actual costs of providing predisposition secure detention services for juveniles within its jurisdiction.[19/]

102. Nothing in the statute or the implementing rules has changed in such a way as to vitiate Judge Quattlebaum's conclusion in Hillsborough IV that "the annual reconciliation statement issued pursuant to the rule is final unless successfully challenged in an administrative proceeding"

pursuant to section 120.569, Florida Statutes. See Finding of Fact 37, supra.

103. Therefore, the December 7, 2009, annual reconciliation constituted final agency action as to all counties that did not contest the reconciliation in accordance with the Department's January 26, 2010, letter. The Department did not have the statutory authority to recalculate the amounts set forth in that annual reconciliation for the 55 counties that did not file challenges.[20/]

104. As regards the parties to this proceeding, the following Counties did not contest the December 7, 2009, annual reconciliation: Alachua, Orange, Escambia, City of Jacksonville, Bay, Seminole, and Okaloosa. As to these Counties, the annual reconciliation should have constituted final agency action and spared them further involvement in litigation. The amounts set forth for these Counties in the annual reconciliation should be reinstated and their accounts reconciled on that basis, as follows:

	Reconciled Share of Trust Fund
Alachua	$1,546,919
Orange	$7,097,695
Escambia	$1,890,211
City of Jacksonville	$5,963,681

Bay $1,073,384

Seminole $2,510,551

Okaloosa $1,014,157

105. The following Counties did contest the reconcilation pursuant to the Department's January 26, 2010, letter: Brevard, Broward, Santa Rosa, Pinellas, Hillsborough, Hernando, and Miami-Dade. By letter dated March 23, 2010, the Department informed all 67 counties that it had completed its analysis of the challenges[21/] submitted by 12 counties and was instituting adjustments to the accounts of 45 counties, including 10 that were fiscally constrained.

106. For the reasons stated above, the March 23, 2010, adjustment was effective only as to the 12 counties that challenged the annual reconciliation. Of those 12, seven are parties to this litigation. Of the seven Counties, four accepted the adjustment announced by the March 23, 2010, letter: Pinellas, Brevard, Hillsborough, and Santa Rosa.[22/] As to these four Counties, the Department's March 23, 2010, adjustment letter should have ripened into final agency action without need for further litigation.[23/] The amounts set forth for these counties in the adjustment letter should be reinstated and their accounts reconciled on that basis, as follows:[24/]

	Share of Trust Fund
Santa Rosa	$570,914
Pinellas	$4,475,906
Brevard	$2,542,008
Hillsborough	$6,477,564

107. To this point, the resolution of the amounts owed has been based on the simple principle of administrative finality as to 10 of the Counties that are parties to this proceeding: proposed agency action that is accepted, affirmatively or tacitly, by a party becomes final agency action as to that party and as to the agency upon the expiration of the time for requesting an administrative hearing. However, there remain three Counties that challenged the annual reconciliation, contested the later adjustment, and continue to assert their statutory right to be assessed only the "actual costs" associated with predisposition secure detention: Hernando, Miami-Dade, and Broward.

108. During the course of this litigation, some of the parties asked the Department to perform an alternative calculation of the fiscal year 2008-2009 reconciled amounts. In an email dated January 12, 2011, the Department transmitted to the Counties a speadsheet that the Department titled "2008/2009 Secure Detention Cost Sharing Data Analysis," taking care to point out that the document was "not an amended or revised

reconciliation."[25/] Several Counties, including the three whose contributions to the Shared Trust Fund remain unresolved, have urged this tribunal to adopt this most recent analysis as the most accurate available measure of their pre-disposition detention days and actual costs of detention. In its Proposed Recommended Order, the Department also argues that it should be allowed to employ this "more accurate methodology" to amend the annual reconciliation as to all counties.

109. Ms. Campbell, the Department's data integrity officer, testified as to several changes in programming that are reflected in the results of the January 12 analysis. The dispositive change for purposes of this order is that the analysis was performed in accordance with the Department's new rule 63G-1.011(2), which provides:

> "Commitment" 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.

110. Ms. Campbell stated that in previous reconciliations and adjustments, the Department stopped billing the counties at the point a final disposition was given by the court. Under the new rule, the Department would continue billing the counties if the disposition did not result in the child's commitment to the Department.

111. Florida Administrative Code Rule 63G-1.011 became effective on July 6, 2010, well after the close of fiscal year 2008-2009 and well after the Department's annual reconciliation and adjustments for that fiscal year were performed. Aside from the increased accuracy claimed by the Department, no ground has been cited for its retroactive application in this case.

112. Further, rule 63G-1.011 has recently been found an invalid exercise of delegated legislative authority on the precise ground that its narrow definition of "commitment" is in conflict with section 985.686(5), Florida Statutes, which limits the counties' responsibility to "the period of time prior to final court disposition." Okaloosa Cnty. et al. v. Dep't of Juv. Just., Case No. 12-0891RX (Fla. DOAH July 17, 2012).[26/] In other words, the Department's prior practice was more in keeping with its statutory mandate than was the "correction" enacted by rule 63G-1.011.

113. In fairness to the Department, it should be noted that its revised definition of commitment was at least partly an outcome of Hillsborough III. In that decision, Judge Quattlebaum concluded, "The [Department] has no responsibility for the expenses of detention related to juveniles who were not committed to the [Department]'s care and supervision. Nothing in the statute or the previous Final Orders indicates otherwise." Hillsborough III at ¶ 13. On this point, however,

Hillsborough III adopts the position of the Department that was not seriously challenged.[27/] However, section 985.686(3) requires the county to pay "the costs of providing detention care... for the period of time prior to final court disposition." The statute does not state that "final court disposition" is equivalent to "commitment to the Department."[28/]

114. Okaloosa County provides a more comprehensive analysis statute: the Department is responsible for the expenses of all post-disposition detention, not merely detention of juveniles who are committed to the Department. The evidence in the instant case made it clear that probation is another post-disposition outcome that may result in detention, and that the Department has made a practice of charging the counties for detentions related to this disposition.

115. Judge Anthony H. Johnson, the Circuit Administrative Judge of the Juvenile Division, Ninth Judicial Circuit, testified as to the procedures that a circuit court follows after the arrest of a juvenile charged with delinquency:

> 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 . . . 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 the 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.[29/] 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.

116. Judge Johnson testified that "by definition, anything after the disposition hearing would be post-disposition." He went on to explain:

> You know, the problem here, I think, is we have a couple of different dispositions. We have one disposition that's the initial disposition. And if the child is put on probation, and then violates the probation, then you have a whole other hearing as to whether or not there was a violation of probation. And, if so, you have a whole new disposition hearing as to what the sanction ought to be for violation of probation.

117. The probation issue was a key point of contention between the Counties and the Department. The Department does not consider itself responsible for detentions of juveniles who been given a disposition of probation. Thus, when a juvenile is picked up for a violation of probation, the Department considers that detention to be "pre-disposition" and chargeable to the county. The Counties contend, more consistently with section 985.686(3), that probation is a consequence of "final court disposition," and any subsequent detentions arising from violation of probation should be considered post-disposition and paid by the Department.

118. Aside from the legal barriers, there are practical considerations that render the January 12, 2011, analysis unsuitable as a measure of the Counties' actual costs. Ms. Davis testified that the analysis is "a little deceiving

because it only includes an analysis based on commitment." She noted that the analysis did not take into account the adjustments that had been made in light of the twelve counties' challenges to the annual reconciliation. Ms. Davis stated: "We simply ran an analysis per the request of the counties as to what the days would be based on commitment only, using our new programming that we do today. . . [W]e couldn't submit it as a reconciliation because it's not correct. There are some address errors. We didn't fix those."

119. Ms. Davis testified that the Department never had any intention that the January 12 analysis should be considered a reconciliation. The programming and the data set had changed since the annual reconciliation. The information in the analysis was not the same information that was analyzed in the reconciliation. Comparing the reconciliation to this analysis would be "apples to oranges" in many respects, according to Ms. Davis.

120. Based on the foregoing, it is found that the January 12, 2011, analysis does not establish the "actual costs" of the remaining counties and is not an accurate basis for settling their final accounts for fiscal year 2008-2009.

121. It is further found that, because the Department has never attempted to ascertain the Counties' actual costs and provided no such data to this tribunal, the record of this

proceeding offers insufficient evidence to establish the actual costs for secure juvenile detention care for fiscal year 2008-2009 for Hernando, Miami-Dade, and Broward Counties.

122. The Department conceded that its annual reconciliation and the adjustment thereto were based on inaccurate data and included significant errors. The January 12, 2011, analysis was based on a definition of "commitment" that has since been found in derogation of section 985.686(5), Florida Statutes. None of the analyses performed by the Department went beyond the calculation of the number of detention days to the calculation of any county's actual costs of providing detention care.

123. The Department bears the burden of providing a reconciliation to each of these three counties that reflects their actual costs of providing secure juvenile detention care. Hernando, Miami-Dade, and Broward Counties are each entitled to an accounting of their actual costs without regard to the costs of any other county.

CONCLUSIONS OF LAW

124. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of these consolidated proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2011).

125. Each County is a non-fiscally constrained county and is responsible for paying the Department its actual costs for predisposition secure juvenile detention care pursuant to section 985.686, Florida Statutes. Each County's substantial interests are being determined by the Department in these proceedings, and each County therefore has standing to pursue relief in this tribunal.

126. Intervenor Florida Association of Counties, Inc. is a not-for-profit corporation that advocates on behalf of Florida's county governments. A substantial number of its members are adversely affected by the Department's actions and the Association therefore has standing to participate in these proceedings. NAACP, Inc. v. Fla. Bd. of Regents, 863 So. 2d 294 (Fla. 2003); Fla. Home Builders Ass'n v. Dep't of Labor & Emp. Sec., 412 So. 2d 351 (Fla. 1982).

127. All petitions were timely filed in these proceedings.

128. The burden of proof is on the party asserting the affirmative of an issue. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977). The proposed agency action is to assess each of the Counties for the provision of predisposition juvenile detention services within its jurisdiction, pursuant to the annual reconciliation. The Department asserts the affirmative of that issue and must prove

by a preponderance of the evidence that the proposed assessment should become final agency action.

129. Section 985.686(1), provides that the state and counties have a joint obligation to contribute to the financial support of the detention care provided for juveniles, as further set forth in section 985.686.

130. Section 985.686 sets forth the manner in which the state and the counties will fulfill their joint obligations. Each non-fiscally constrained county is required to pay the costs of providing detention care for juveniles "for the period of time prior to final court disposition." § 985.686(3), Fla. Stat. The state is therefore responsible for paying the costs of juvenile detention care for the period of time after "final court disposition."

131. Florida Administrative Code Rule 63G-1.002(3) defines "final court disposition" to mean "the date the court enters a disposition for the subject referral."

132. Section 985.03(21), Florida Statutes, defines "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."

132. Section 985.433(7), Florida Statutes, sets forth the sequence of events that occur when the court determines that a juvenile should be adjudicated and committed to the Department:

> (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.
>
> (a) The juvenile probation officer shall recommend to the court the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child. If the court has determined that the child was a member of a criminal gang, that determination shall be given great weight in identifying the most appropriate restrictiveness level for the child. The court shall consider the department's recommendation in making its commitment decision.
>
> (b) The court shall commit the child to the department at the restrictiveness level identified or may order placement at a different restrictiveness level. The court shall state for the record the reasons that establish by a preponderance of the evidence why the court is disregarding the assessment of the child and the restrictiveness level recommended by the department. Any party may appeal the court's findings resulting in a modified level of restrictiveness under this paragraph.
>
> (c) The court may also require that the child be placed in a probation program following the child's discharge from commitment. Community-based sanctions under

> subsection (8) may be imposed by the court at the disposition hearing or at any time prior to the child's release from commitment.

133. Section 985.433(8) Florida Statutes, however, provides that the court's "disposition" may result in an outcome other than commitment to the Department:

> (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.

134. The Department's position in this proceeding is that while its annual reconciliation was appropriate at the time it was issued, the Department has since developed "a more accurate calculation for determining when a youth is on committed status" and that the Department should issue an amended reconciliation utilizing this more accurate methodology.

135. The Department's position is based on the faulty premise that "disposition" equals "commitment to the Department," and that a "more accurate calculation" of the commitment status of juveniles will result in an assessment more in keeping with section 985.686. It was this premise that led

Judge Watkins to invalidate the Department's current rules in Okaloosa County. See endnote 26, supra. The Department's position as to the definition of "final court disposition" is at odds with section 985.686 and should be abandoned in any subsequent calculation of a county's predisposition days.

136. The facts demonstrated that the Department's method of calculating the estimated costs at the outset of fiscal year 2008-2009 were more or less consistent[30/] with section 985.686(5) and Florida Administrative Code Rule 63G-1.004. No County raised an issue regarding the amount of the estimated costs or the method prescribed for paying them.

137. Florida Administrative Code Rule 63G-1.008 sets forth the method by which the Department performs the annual reconciliation. See Finding of Fact 11, supra, for the text of the rule. The rule states that the Department is to provide "each paying county" an annual reconciliation statement on or before January 31 after the fiscal year in question. Thus, the annual reconciliation statement for fiscal year 2008-2009, which ended on June 30, 2009, was due on or before January 31, 2010. The evidence demonstrated that the Department issued the annual reconciliation statements to the counties on December 7, 2009.

138. Contrary to the requirement of section 985.686(5) that the annual reconciliation reflect the "actual costs" of each county, the December 7, 2009, reconciliation reflected

merely the Department's redistribution of the fixed sum of $95,404,579 among the counties based upon the counties' percentage of actual predisposition days during fiscal year 2008-2009. The statute requires the Department to perform a cost estimate for each county at the start of the fiscal year and then to provide each county with a statement of its actual costs at the close of the fiscal year. In practice, the Department provided each county with a reconciliation of its actual usage, not its actual costs.

139. The evidence established that the Department made no effort to calculate each county's actual costs, choosing instead to treat the Legislature's appropriation to the Shared Trust Fund as the "actual costs" for all of the non-fiscally constrained counties. The Department felt itself bound to collect this amount from the counties regardless of their actual usage, to the point of conceding that if the entire predisposition usage for all the counties in the State of Florida were one day, the county in which that juvenile was detained would owe the Department $95 million. Simply stating this absurd proposition should have told the Department that its reasoning was faulty.

140. The Department misunderstood the term "appropriation." The statutory term "appropriation" carries the meaning of a legislative authorization to an agency to spend

money from a given fund. It is not and cannot be an authorization for a state executive branch agency to raise revenues from a separate sovereign, i.e., a county government. A proper understanding of the Shared Trust Fund "appropriation" would have led the Department to use it as the basis of its estimates at the start of the fiscal year without assigning it the additional function of proxy for a calculation of each individual county's actual costs at the close of the fiscal year.[31/]

141. The Department deviated from the requirements of section 985.686(5) by failing to calculate "actual costs" and by treating the counties as a collective entity responsible for the collection of the entire amount of the Shared Trust Fund appropriation for fiscal year 2008-2009. The statute required the Department to calculate the actual costs of each county at the end of the fiscal year. Under section 985.686, each county is responsible for the actual costs of providing predisposition detention care within its jurisdiction. Its obligation should not be increased or diminished because of usage in other counties.

142. Despite the fact that the annual reconciliation bore no more than a coincidental relationship to the counties' "actual costs," all but 12 counties accepted it. The evidence established that at least some of the counties accepted refunds

in accordance with the process outlined in the December 7, 2009, reconciliation and believed that their dealings with the Department as to fiscal year 2008-2009 were at a close.

143. The December 7, 2009, letter did not expressly provide a clear point of entry by which a county could challenge the proposed annual reconciliation. However, a point of entry was provided by the Department's January 26, 2010, letter that clearly notified the counties of the "proper procedures for handling any challenges to the annual reconciliation data sent to you in December 2009 . . . ." Counties were given 21 days within which to file their challenges. The Department stated that it would review the challenges and "determine if any adjustments need to be made and which counties will be affected by those potential changes."

144. The letter was flawed in at least two respects. It implied that counties that did not file challenges could still find their reconciled assessments "adjusted." The letter also stated that all affected counties must concur with the Department's proposed resolution of the challenges in order to avoid a formal hearing at DOAH. Despite these flaws, the January 26, 2010 letter provided the counties a clear point of entry to commence a challenge to the proposed agency action originally set forth in the December 7, 2009, annual reconciliation letter.

145. Rule 63G-1.009 set forth the Department's dispute resolution process for quarterly reports. It was silent as to challenges of the annual reconciliation, but the Department interpreted the rule to allow such challenges. In any event, the Department would be required to offer some sort of notice and hearing to deal with disputes regarding the annual reconciliation. As Judge Quattlebaum noted in Hillsborough IV, the provisions of section 120.569, Florida Statutes, offer an opportunity for a hearing in any proceeding in which the substantial interests of a party are determined by an agency.

146. The Department allowed 12 counties to challenge the annual reconciliation. The Department reviewed those challenges and made adjustments based on that review by way of a letter dated March 23, 2010. Had the Department limited its adjustments to the parties that filed challenges, its actions would have been consistent with section 985.686 and its implementing rules.

147. However, the Department expanded the adjustments to include non-fiscally constrained counties that did not challenge the annual reconciliation. "Absent any evidence to the contrary, the annual reconciliation statement issued pursuant to the rule is final unless successfully challenged in an administrative proceeding. . . ." Hillsborough IV at ¶ 25.

148. Once the 21-day period for filing a challenge passed, the proposed agency action set forth in the December 7, 2009, annual reconciliation became final as to those counties that did not file a challenge. Dep't of Envtl Prot. v. PZ Constr. Co., Inc., 633 So. 2d 76, 78 n.4 (Fla. 3d DCA 1994); J.W.C. Co., 396 So. 2d at 786-787 (proposed agency action becomes final if no hearing is requested by an objecting party).

149. Courts have recognized that agencies have "inherent authority to reopen a closed case when there is a change in circumstances or a demonstrated public need or interest." Russell v. Dep't of Bus. & Prof'l Reg., 645 So. 2d 117, 119 (Fla. 1st DCA 1994). However, such authority is only to be exercised upon a demonstration of "extraordinary circumstances." Richter v. Fla. Power Corp., 366 So. 2d 798, 800 (Fla. 2d DCA 1979). See also, on the general subject of administrative finality, Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679 (Fla. 1979); People's Gas System v. Mason, 187 So. 2d 335, 339 (Fla. 1966); Delray Medical Ctr., Inc. v. Ag. For Health Care Admin., 5 So. 3d 26, 29-30 (Fla. 4th DCA 2009).[32/]

150. In this case, the only reason for the Department to revisit the annual assessments as to the non-challenging parties was the Department's own misreading of its legislative mandate. The Department believed that it was required to "tether" all of the non-fiscally constrained counties for the purposes of

collecting the $95 million dollar appropriation. Thus, downward adjustments to the assessments of the challenging counties would necessitate upward adjustments to the assessments of some of the non-challenging counties in order to maintain the $95 million balance.

151. Because there was no legitimate reason to disturb the December 7, 2009, annual reconciliation as to those counties that chose not to challenge it, the Department should reinstate the annual reconciliation amounts for the following Counties: Alachua, Orange, Escambia, City of Jacksonville, Bay, Seminole, and Okaloosa.

152. Seven of the 12 challenging counties are parties to this litigation. Four of the seven Counties accepted the adjustment set forth in the Department's March 23, 2010, letter: Pinellas, Brevard, Hillsborough, and Santa Rosa. The Department should reinstate the amounts set forth for these counties in the March 23, 2010, adjustment letter.

153. Hernando, Miami-Dade, and Broward Counties challenged the December 7, 2009, annual reconciliation and did not accept the March 23, 2010, adjustment letter. Each of these Counties is entitled to an accounting of its actual costs for providing predisposition juvenile detention for fiscal year 2008-2009.

The evidence adduced in this proceeding was insufficient to permit the undersigned to attempt such an accounting in this Recommended Order.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

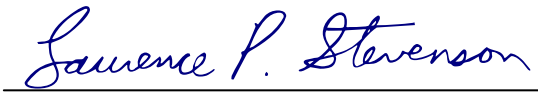
RECOMMENDED that the Department of Juvenile Justice enter a final order that:

A. Reinstates the amounts set forth in the Department's December 7, 2009, annual reconciliation letter for the following Counties: Alachua, Orange, Escambia, City of Jacksonville, Bay, Seminole, and Okaloosa;

B. Reinstates the amounts set forth in the Department's March 23, 2010, adjustment letter for the following Counties: Pinellas, Brevard, Hillsborough, and Santa Rosa; and

C. Provides that the Department will, without undue delay, provide a revised assessment that states the actual costs of providing predisposition secure juvenile detention care for fiscal year 2008-2009 for the following Counties: Hernando, Miami-Dade, and Broward.

DONE AND ENTERED this 22nd day of August, 2012, in Tallahassee, Leon County, Florida.



LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of August, 2012.

ENDNOTES

[1/] The cited Florida Administrative Code provisions were repealed on July 6, 2010, but were the rules applicable during fiscal year 2008-2009. All references to section 985.686, Florida Statutes are to the 2008 version of that law.

[2/] The term "detention care" is thus narrower for purposes of section 985.686 than it is elsewhere in chapter 985, Florida Statutes. Section 985.03, Florida Statutes, which sets forth the definitions of terms for purposes of chapter 985, defines the term as follows:

> (18) "Detention care" means the temporary care of a child in secure, nonsecure, or home detention, pending a court adjudication or disposition or execution of a court order. There are three types of detention care, as follows:
>
> (a) "Secure detention" means temporary custody of the child while the child is under the physical restriction of a

detention center or facility pending adjudication, disposition, or placement.

(b) "Nonsecure detention" means temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement.

(c) "Home detention" means temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement.

[3/] The definition of "detention center or facility" at section 985.03(19), Florida Statutes, provides that such a facility may be used only pending court adjudication or pending the disposition or execution of a court order. A facility used for the commitment of adjudicated delinquents cannot be considered a "detention center or facility." Thus, the post-disposition care provided by the Department under section 985.686, Florida Statutes, is limited to care in a "detention center or facility" after adjudication or disposition but prior to the final residential placement ordered by the court. See section 985.433, Florida Statutes, for the detailed procedures regarding disposition hearings in delinquency cases.

[4/] Chapter 985, Florida Statutes, does not define the term "actual costs."

[5/] Because the current fiscal year is not complete at the time the Department produces its estimate, the "most recently completed fiscal year" is at least one year removed from the estimate. For example, the Department's estimate for fiscal year 2008-2009 was based on actual usage data from fiscal year 2006-2007. The Counties persuasively argued that the staleness of the data tended to exaggerate their contributions to the Shared Trust Fund for fiscal year 2008-2009, see Finding of Fact 17, infra, because the recent trend for pre-disposition detention days had been downward.

A question unaddressed by the litigants in this proceeding is the reliability of an estimate based on a previous year's "actual costs." The evidence produced at the hearing showed that the Department does not produce an accounting of "actual costs" at the end of the fiscal year as required by section 985.686(5), which raises doubt about the provenance of the "actual costs" that form the basis of the estimates at the start of the next fiscal year. The testimony of Beth Davis, the Department's Director of the Office of Program Accountability, indicated that the Department uses actual cost data in preparing its legislative budget requests. However, Ms. Davis also testified that the Department uses actual cost data in preparing the annual reconciliation, a statement that was not borne out by the documentary evidence.

[6/] Judge Manry observed that the Shared Trust Fund "appropriation" was atypical:

> 9. The annual legislative "appropriation" for the counties' share of detention care is actually an account payable by the counties rather than an appropriation of funds. For the 2007-2008 fiscal year, the legislature "appropriated" a total of $125,327,667.00 for detention care. However, only $30,860,924.00 of the total amount was actually appropriated from general revenue. (Endnote omitted.)

[7/] In Hillsborough V, the undersigned accepted the Department's explanation of its "tethering" practice without further inquiry, again because the practice was not directly challenged by the County. Hillsborough County's challenge dealt with the fact that the counties were being assessed a higher amount per day than the Department appeared to be paying for post-disposition services. The Department successfully argued that this apparent disparity was simply a consequence of Judge Manry's decision in Hillsborough I that the Shared Trust Fund and the Department's General Revenue appropriations should not be lumped together in arriving at a per diem rate for secure detention.

[8/] Miami-Dade appears in the Department's materials as "Dade County." The City of Jacksonville appears in the Department's materials as "Duval County." This Recommended Order employs the counties' preferred references.

[9/] This expenditure number in the annual reconciliation represented a reduction from the $99,583,854 set forth in the General Revenue Act as the amount of the Shared Trust Fund appropriation. This reduction was not due to the reduced number of pre-dispositional days. The Department's December 7, 2009 letter attributed the reduction to "a life insurance premium decrease, a health insurance premium increase and a Governor's office decrease adjustment to the People First human resources outsourcing payment."

[10/] Ms. Davis also testified that she used "actual expenditure data provided to me from the budget office" in determining the annual reconciliation, but in fact the overall cost number in the reconciliation did not budge from the initial estimate.

[11/] The closest analogy Mr. Herring could conjure was the K-12 education appropriation, in which the Legislature sets the amount that school districts must raise by way of ad valorem taxes, with the Legislature making up any shortfall with General Revenue funds to the counties. However, even in this instance, the Legislature cannot directly force the counties to raise the indicated amount of ad valorem taxes; it can only withhold the General Revenue portion of education funding to any county that fails to do so.

[12/] The impropriety of using the date a juvenile is committed to the Department as a proxy for "final court disposition" is discussed at Findings of Fact 108-112, infra.

[13/] At the time of the annual reconciliation, 38 counties were listed as non-fiscally constrained counties required to pay their portion of the Shared Trust Fund. In her testimony, Ms. Davis referenced "45 counties" that were affected by the adjustment, but her statement was either an off-the-cuff estimate or included some of the fiscally constrained counties whose percentages of the total days were slightly affected by the adjustment.

[14/] The budget numbers set forth at Findings of Fact 18 and 19, supra, indicate that the General Revenue figure of $30,310,534 amounted to 23.33% of the entire appropriation for secure detention services for fiscal year 2008-2009 at the time chapter 2008-152 became law.

[15/] The per diem standard would appear to be a closer approximation of actual costs than the "fixed appropriation and

tethering" approach used by the Department during fiscal year 2008-2009, which at best seemed to capture the "actual costs" for fiscal year 2006-2007. If a court were to conclude that it is impracticable for the Department to calculate precisely a county's actual costs and that the requirements of section 985.686 could be met by a substitute that approximated actual costs, then the per diem approach would present an acceptable alternative.

[16/] "Actual cost" versus "standard cost" is an issue in cost accounting for manufacturing companies, not relevant in this proceeding.

[17/] See, e.g., sections 24.108(3)&(5), 61.11(2)(a), 99.097(4)&(5), 110.181(2)(b), 157.07, 157.19, 161.101(1), 166.233(2)(a), 197.3632(8)(c), 206.028(3), 215.405, 296.37(1), 316.006(2)(b)1., 320.27(3), 337.401(3)(c)1.a.(I), 339.12(4)(a)&(5), 366.071(5)(b), 367.082(5)(b)2., 395.0163(2), 400.232(2), 400.967(5), 408.042, 408.805(5)&(6), 409.141(1)&(3), 409.25657(3), 430.709(2), 440.385(3)(b)8.&9., 455.217(1)(b)&(d), 456.017(1)(b), (c)1., & (2), 479.07(8)(b)3., 497.144(3)&(9), 513.045(1)(b), 550.054(8)(c)&(e), 624.501(13), 624.610(3)(b)4., 957.07(1), and 1012.585(1)(a)2., Florida Statutes.

[18/] Section 119.011(1) provides that the "actual cost of duplication" of a public record is "the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication." This definition is echoed in section 378.406(2)(b), which defines "actual cost of duplicating" public records relating to mine reclamation projects.

Section 519.101 provides for the establishment of "Florida equity exchanges." Subsection (7) provides that if such an exchange is established, the Financial Services Commission is to adopt rules providing for the reimbursement by the exchange or any of its members of the "actual costs" incurred by the Office of Financial Regulation in connection with regulating and supervising the exchange. "Actual costs" is defined as "all direct and indirect costs and expenses incurred by the office in connection with the exchange including, without limitation, general administrative costs, travel expenses, salaries, and other benefits given to persons involved in the regulation and supervision of the exchange." The office is empowered to make "reasonable and necessary" allocations and to require the

exchange and/or its members to pay "interim assessments related to estimated final assessments."

Section 627.7295 sets forth requirements for motor vehicle insurance contracts. Subsection (5) provides certain fees that a general lines agent may charge. Paragraph (b) of subsection (5) provides as follows:

> To the extent that a licensed general agent's cost of obtaining motor vehicle reports on applicants for motor vehicle insurance is not otherwise compensated, the agent may, in addition to any other fees authorized by law, charge an applicant for motor vehicle insurance a reasonable, nonrefundable fee to reimburse the agent the actual cost of obtaining the report for each licensed driver when the motor vehicle report is obtained by the agent simultaneously with the preparation of the application for use in the calculation of premium or in the proper placement of the risk. The amount of the fee may not exceed the agent's actual cost in obtaining the report which is not otherwise compensated. Actual cost is the cost of obtaining the report on an individual driver basis when so obtained or the pro rata cost per driver when the report is obtained on more than one driver; however, in no case may actual cost include subscription or access fees associated with obtaining motor vehicle reports online through any electronic transmissions program. (Emphasis added).

[19/] At several points in his testimony, Mr. Herring referenced a Department rule that codified its practice of using the Shared Trust Fund appropriation as a substitute for a calculation of "actual costs." Presumably he was referring to Florida Administrative Code Rule 63G-1.002(1), which defines "cost of detention care" as "the cost of providing detention care as determined by the General Appropriations Act." This definition could be read as an effort to finesse the straightforward statutory requirement that "actual costs" be determined. However, the term "cost of detention care" appears only in 63G-

1.004, regarding the calculation of estimated costs at the start of the fiscal year. The rule dealing with the annual reconciliation references "the actual cost of the county's usage" during the past fiscal year, which is roughly consistent with section 985.686(5). Fla. Admin. Code R. 63G-1.008(1). The undersigned therefore finds that the Department's practice constitutes a deviation from its rule and finds it unnecessary to address the validity of the rule itself.

[20/] It is of course true that the annual reconciliation for these 55 counties reflects not "actual costs" but the Department's reshuffling of the $95,404,579 Shared Trust Fund appropriation in light of the counties' actual predispositional days. However, none of these 55 counties contested the Department's action, which therefore ripened into final agency action regardless of its initial improvidence. This order does not purport to recommend a course of action to the Department as regards those counties that were not parties to this litigation.

The final shares of the Shared Trust Fund for the 55 non-challenging counties would be as follows, based on the December 7, 2009 annual reconciliation ("NFC" means "non-fiscally constrained" and "FC" means "fiscally constrained"):

County	Actual Predispositional Days	Share of Trust Fund (NFC)	Share of Trust Fund (FC)
Alachua	5,511	$1,546,919	
Baker	284		$79,718
Bay	3,824	$1,073,384	
Bradford	9,619		$167,857
Brevard	CHALLENGE		
Broward	CHALLENGE		
Calhoun	114		$31,999
Charlotte	1,667	$467,921	
Citrus	1,010	$283,504	
Clay	2,863	$803,634	
Collier	6,055	$1,699,618	
Columbia	1,525		$428,062
Dade	CHALLENGE		
Desoto	651		$182,734
Dixie	372		$104,419
Duval	21,246	$5,963,681	

Escambia	6,734	$1,890,211	
Flagler	1,565	$439,290	
Franklin	106		$29,754
Gadsden	949		$266,381
Gilchrist	125		$35,087
Glades	238		$66,806
Gulf	305		$85,612
Hamilton	574		$161,120
Hardy	257		$72,139
Hendry	1,336		$375,011
Hernando	CHALLENGE		
Highlands	939		$263,574
Hillsborough	CHALLENGE		
Holmes	169		$47,438
Indian River	1782	$500,201	
Jackson	497		$139,506
Jefferson	230		$64,560
Lafayette	0		$0
Lake	2791	$783,424	
Lee	CHALLENGE		
Leon	4570	$1,282,784	
Levy	796		$223,435
Liberty	65		$18,245
Madison	202		$56,701
Manatee	7546	$2,118,137	
Marion	5821	$1,633,935	
Martin	1898	$532,762	
Monroe	1401	$393,256	
Nassau	744	$208,838	
Okaloosa	3613	$1,014,157	
Okeechobee	936		$262,732
Orange	25286	$7,097,695	
Osceola	4879	$1,369,519	
Palm Beach	18269	$5,128,047	
Pasco	CHALLENGE		
Pinellas	CHALLENGE		
Polk	CHALLENGE		
Putnam	2745		$770,512
St. Johns	CHALLENGE		
St. Lucie	7414	$2,081,085	
Santa Rosa	CHALLENGE		

Sarasota	CHALLENGE		
Seminole	8944	$2,510,551	
Sumter	603	$169,260	
Suwannee	951		$266,943
Taylor	492		$138,103
Union	149		$41,824
Volusia	12926	$3,628,285	
Wakulla	292		$81,963
Walton	546	$153,260	
Washington	294		$82,525
TOTAL	184,720	$44,773,358	$4,544,760

[21/] This was the process suggested by Judge Quattlebaum in Hillsborough IV, as set forth in the lengthy quotation at Finding of Fact 37, supra.

[22/] No evidence was produced at the hearing to permit a definitive finding that the five challenging counties that are not parties to this proceeding (Pasco, Sarasota, Lee, Polk, and St. Johns) affirmatively accepted the adjustment made by the Department's March 23, 2010, letter. However, their failure to contest the adjustment leads to the finding that they at least acquiesced to the Department's adjustment.

There was a sizable category of non-fiscally constrained counties that challenged neither the annual reconciliation nor the adjustment. The finding that the annual reconciliation constituted final agency action as to these non-challenging counties suggests that the Department's application of the adjustment to these counties was an ultra vires act. Again, however, this Recommended Order does not presume to instruct the Department as regards to counties that are not parties to this litigation.

[23/] As stated in endnote 20, supra, as regards the annual reconciliation, these adjustments did not reflect the Department's "actual costs," but the Counties' acceptance of the numbers set forth in the March 23, 2010, adjustment letter should be considered final agency action. At the hearing, these four Counties made clear their position that their only interest was to preserve the adjustments made in the March 23, 2010, letter against any further amendments by the Department.

[24/] The following chart adds the four party Counties and the five non-party counties that accepted the March 23, 2010, adjustment to the list of 55 counties that accepted the annual reconciliation:

County	Actual Predispositional Days	Share of Trust Fund (NFC)	Share of Trust Fund (FC)
Alachua	5,511	$1,546,919	
Baker	284		$79,718
Bay	3,824	$1,073,384	
Bradford	9,619		$167,857
Brevard	8,816	$2,542,008	
Broward	CHALLENGE		
Calhoun	114		$31,999
Charlotte	1,667	$467,921	
Citrus	1,010	$283,504	
Clay	2,863	$803,634	
Collier	6,055	$1,699,618	
Columbia	1,525		$428,062
Dade	CHALLENGE		
Desoto	651		$182,734
Dixie	372		$104,419
Duval	21,246	$5,963,681	
Escambia	6,734	$1,890,211	
Flagler	1,565	$439,290	
Franklin	106		$29,754
Gadsden	949		$266,381
Gilchrist	125		$35,087
Glades	238		$66,806
Gulf	305		$85,612
Hamilton	574		$161,120
Hardy	257		$72,139
Hendry	1,336		$375,011
Hernando	CHALLENGE		
Highlands	939		$263,574
Hillsborough	22,465	$6,477,564	
Holmes	169		$47,438
Indian River	1782	$500,201	
Jackson	497		$139,506
Jefferson	230		$64,560

Lafayette	0		$0
Lake	2791	$783,424	
Lee	10574	$3,048,910	
Leon	4570	$1,282,784	
Levy	796		$223,435
Liberty	65		$18,245
Madison	202		$56,701
Manatee	7546	$2,118,137	
Marion	5821	$1,633,935	
Martin	1898	$532,762	
Monroe	1401	$393,256	
Nassau	744	$208,838	
Okaloosa	3613	$1,014,157	
Okeechobee	936		$262,732
Orange	25286	$7,097,695	
Osceola	4879	$1,369,519	
Palm Beach	18269	$5,128,047	
Pasco	6171	$1,779,348	
Pinellas	15523	$4,475,906	
Polk	10994	$3,170,013	
Putnam	2745		$770,512
St. Johns	2079	$599,459	
St. Lucie	7414	$2,081,085	
Santa Rosa	1980	$570,914	
Sarasota	3110	$896,738	
Seminole	8944	$2,510,551	
Sumter	603	$169,260	
Suwannee	951		$266,943
Taylor	492		$138,103
Union	149		$41,824
Volusia	12926	$3,628,285	
Wakulla	292		$81,963
Walton	546	$153,260	
Washington	294		$82,525
TOTAL	266,432	$68,334,218	$4,544,760

[25/] At the final hearing and in their post-hearing submissions, the Counties referred to the December 7, 2009, annual reconciliation as the "First Reconciliation," to the March 23, 2010, adjustments as the "Second Reconciliation," and to the

January 12, 2011, analysis as the "Third Reconciliation." The Department accurately observed that under section 985.686(5) as interpreted in Hillsborough IV there can be only one annual reconciliation statement. For that reason, this Recommended Order has referred to only the December 7, 2009, document as a "reconciliation," without prejudice to the merits of the Counties' arguments.

[26/] Administrative Law Judge W. David Watkins performed an exhaustive review of the legislature's use of the term "disposition" in chapter 985, Florida Statutes, see Okaloosa County at ¶¶ 63-69, before concluding that the statutes "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." Okaloosa County at ¶ 70. Judge Watkins' ultimate conclusion as to this issue was as follows:

> 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-1.0ll (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.

Okaloosa County also invalidated the following rules: 63G-1.013, 63G-1.016, and 63G-1.017. Of particular interest in the instant proceeding is Judge Watkins' conclusions regarding rule 63G-1.017:

> 79. Unlike its predecessor, Rule 63G-l.008, which specifically included the statutory directive of "actual cost," Rule 63G-l.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 reconciliation 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.

Judge Watkins' analysis of the Department's current rules focused on the proper division of costs between the state and the counties, and the inequitable subsidy that the state currently enjoys at the expense of the counties. The "tethering" of the counties was not a major factor in the Okaloosa County decision.

[27/] As Mr. Herring pointed out, in Hillsborough II Judge Manry expressly found that post-disposition care includes custody in a detention center after final disposition but prior to residential placement or release. See Finding of Fact 29, supra.

[28/] To be fair to Judge Quattlebaum in turn, review of the pleadings and proposed recommended orders in Hillsborough III reveals that the county did not seriously contest the Department's assertion that "final disposition. . . is the commitment of a youth to the Department. The Department is responsible for those youth that have been committed. Youth that are on probation are not the responsibility of the [Department]." In its proposed recommended order, Hillsborough County did not offer a detailed rebuttal to the Department's quoted assertion; rather, the county made a blanket argument that it should receive credit for all days for which the Department had not provided a disposition date. Therefore, on the question of the definition of "disposition," Judge Quattlebaum accepted the agency's more or less undisputed interpretation of its governing statute. (The quoted language from the Department's proposed recommended order may be found at http://www.doah.state.fl.us/DocDoc/2009/001396/09001396M-051909-08232423.PDF, ¶ 10. Hillsborough County's proposed recommended order in Hillsborough III may be found at http://www.doah.state.fl.us/DocDoc/2009/001396/09001396M-051909-08054205.PDF)

[29/] Later in his testimony, Judge Johnson elucidated this point as follows:

> Q. Are you bound to follow the recommendation in that report?
>
> A. Pretty much. There's some case law that says that if they decide-- that if we override their decision-- well, we basically can't do it. I suppose there might be some circumstances you could come up with where we could do that. But as a practical matter, any judge that overrides the Department's decision's going to get reversed.

[30/] See endnote 5, supra, regarding the questionable source of the previous year's "actual costs" used by the Department to calculate the subsequent year's estimated costs.

[31/] If the Department's reading of Chapter 2008-152, Laws of Florida were correct, and the Legislature intended for the Department to collect a fixed sum from the counties instead of collecting the "actual costs" set forth in section 985.686, the Legislature's directive would be subject to challenge in a judicial forum. Article III, section 6 of the Florida Constitution provides that every law passed by the Legislature "shall embrace but one subject." Article III, section 12 of the Florida Constitution provides that appropriations laws "shall contain provisions on no other subject." These provisions have been interpreted to mean that the Legislature lacks the authority to amend substantive law by way of an appropriations bill. Chiles v. Milligan, 682 So. 2d 74, 76 (Fla. 1996); Brown v. Firestone, 382 So. 2d 654, 664 (Fla. 1980). The Department's reading of chapter 2008-152 would have the effect of amending section 985.686. In the instant case, the Counties properly raised the constitutional question in their pleadings in order to preserve the issue for the proper tribunal.

[32/] The undersigned is aware that the cited cases involve efforts to reopen cases in which a final order had been entered by an agency, whereas in the instant proceeding proposed agency action became final due to the lack of a challenge by a county. It is reasonable to apply the same principle of finality in both situations, though it also seems logical that a lesser level of

"extraordinary circumstance" might suffice to reopen a case that was never subjected to the rigors of a contested evidentiary hearing. Even so, in the instant case there was no good reason cognizable under the governing statute to revisit the annual reconciliations of the non-challenging counties.

COPIES FURNISHED:

Brian Berkowitz, Esquire
Department of Juvenile Justice
Knight Building, Room 312V
2737 Centerview Drive
Tallahassee, Florida 32399
brian.berkowitz@djj.state.fl.us

Linda Brehmer Lanosa, Esquire
Orange County Attorney`s Office
Litigation Section
201 South Rosalind Avenue, 3rd Floor
Post Office Box 1393
Orlando, Florida 32802-1393
linda.brehmerlanosa@ocfl.net

Thomas V. Dannheisser, Esquire
6495 Caroline Street, Suite C
Milton, Florida 32570-4590
tdannheisser@cox.net

Robert Livingston, Esquire
Alachua County Attorney General Office
Post Office Box 2877
Gainesville, Florida 32602
rl@alachuacounty.us

Carl Edward Brody, Esquire
Pinellas County Attorney’s Office
315 Court Street, 6th Floor
Clearwater, Florida 33756
cbrody@pinellascounty.org

Jennifer Parker, General Counsel
Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500

Charles V. Peppler, Esquire
Escambia County Attorney's Office
221 Palafox Place, Suite 430
Pensacola, Florida 32502
charlie_peppler@co.escambia.fl.us

Daphne E. Jones, Esquire
Broward County Attorney's Office
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301-1826
dajones@broward.org

Loree L. French, Esquire
City of Jacksonville
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
lfrench@coj.net

Shannon L. Wilson, Esquire
Office of the County Attorney
2725 Judge Fran Jamieson Way
Building C, 3rd Floor
Viera, Florida 32940
shannon.wilson@brevardcounty.us

Robert A. McMillan, Esquire
Office of the Seminole County Attorney
1101 East First Street
Sanford, Florida 32771

Susan E. Dietrich, Esquire
Seminole County Attorney's Office
1101 East First Street
Sanford, Florida 32771
sdietrich@seminolecountyfl.gov

Gregory T. Stewart, Esquire
Nabors, Giblin and Nickerson, P.A.
1500 Mahan Drive, Suite 200
Post Office Box 11008
Tallahassee, Florida 32302
gstewart@ngnlaw.com

Edward A. Dion, Esquire
Nabors, Giblin, & Nickerson, P.A.
208 Southeast Sixth Street
Fort Lauderdale, Florida 33301
edion@ngnlaw.com

John R. Dowd, Esquire
Okaloosa County Attorney`s Office
Post Office Box 404
901 Eglin Parkway
Shalimar, Florida 32579-0404

Carly J. Schrader, Esquire
Nabors, Giblin and Nickerson, P.A.
1500 Mahan Drive, Suite 200
Post Office Box 11008
Tallahassee, Florida 32302
cschrader@ngnlaw.com

Angela J. Jones, Esquire
6495 Caroline Street, Suite C
Milton, Florida 32570
sheilat@santarosa.fl.gov

Stephen M. Todd, Esquire
Hillsborough County Attorney`s Office
Post Office Box 1110
Tampa, Florida 33601
todds@hillsboroughcounty.org

Estephanie Resnik, Esquire
Miami-Dade County Attorney's Office
111 Northwest 1st Street, Suite 2810
Miami, Florida 33128
resnik@miamidade.gov

Michael John Wheeler, Esquire
Florida Department of Juvenile Justice
2737 Centerview Drive
Tallahassee, Florida 32399
michael.wheeler@djj.state.fl.us

Richard Appicello, Esquire
Hernando County Attorney's office
20 North Main Street
Brownsville, Florida 34601
rappicello@co.hernando.fl.us

Jennifer W. Shuler, Esquire
Bay County Attorney's Office
840 West 11th Street
Panama City, Florida 32401-2336
jshuler@baycountyfl.gov

Terrell K. Arline, Esquire
Bay County Attorney's Office
840 West 11th Street
Panama City, Florida 32401-2336
tarline@baycountyfl.gov

Wansley H. Walters, Secretary
Department of Juvenile Justice
Knight Building
2737 Centerview Drive
Tallahassee, Florida 32399-3100
Wansley.walters@djj.state.fl.us

Brian Berkowitz, General Counsel
Department of Juvenile Justice
Knight Building
2737 Centerview Drive
Tallahassee, Florida 32399-3100
Brian.berkowitz@djj.state.fl.us

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.