

By Representative Murman

1 A bill to be entitled
 2 An act relating to the offense of failure to
 3 appear; providing that it is a violation of law
 4 for a juvenile to fail to appear as required
 5 before a court or judicial officer; amending s.
 6 985.215, F.S.; authorizing the detention of a
 7 juvenile charged with failure to appear;
 8 providing for an extension of such period of
 9 detention; reenacting ss. 790.22(8),
 10 985.208(1), 985.213(2), 985.228(1), F.S.,
 11 relating to the offense of possessing weapons
 12 or firearms by a juvenile, the detention of a
 13 juvenile, and the adjudicatory hearing for a
 14 juvenile, to incorporate the amendment to s.
 15 985.215, F.S., in references thereto; providing
 16 an effective date.

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 18 Be It Enacted by the Legislature of the State of Florida:

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 20 Section 1. Failure to appear.--Any child who fails to
 21 appear before the court or a judicial officer as required
 22 commits a violation of law. The court may order that the child
 23 be taken into custody and placed into secure-detention care,
 24 home-detention care, or nonsecure-detention care as provided
 25 in section 985.215, Florida Statutes.

26 Section 2. Subsections (2) and (5) of section 985.215,
 27 Florida Statutes, are amended to read:

28 985.215 Detention.--

29 (2) Subject to the provisions of subsection (1), a
 30 child taken into custody and placed into nonsecure or home
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1 detention care or detained in secure detention care prior to a
2 detention hearing may continue to be detained by the court if:
3 (a) The child is alleged to be an escapee or an
4 absconder from a commitment program, a community control
5 program, furlough, or aftercare supervision, or is alleged to
6 have escaped while being lawfully transported to or from such
7 program or supervision.
8 (b) The child is wanted in another jurisdiction for an
9 offense which, if committed by an adult, would be a felony.
10 (c) The child is charged with a delinquent act or
11 violation of law and requests in writing through legal counsel
12 to be detained for protection from an imminent physical threat
13 to his or her personal safety.
14 (d) The child is charged with committing an offense of
15 domestic violence as defined in s. 741.28(1) and is detained
16 as provided in s. 985.213(2)(b)3.
17 (e) The child is charged with possession or
18 discharging a firearm on school property in violation of s.
19 790.115.
20 (f) The child is charged with a capital felony, a life
21 felony, a felony of the first degree, a felony of the second
22 degree that does not involve a violation of chapter 893, or a
23 felony of the third degree that is also a crime of violence,
24 including any such offense involving the use or possession of
25 a firearm.
26 (g) The child is charged with any second degree or
27 third degree felony involving a violation of chapter 893 or
28 any third degree felony that is not also a crime of violence,
29 and the child:
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1 1. Has a record of failure to appear at court hearings
2 after being properly notified in accordance with the Rules of
3 Juvenile Procedure;
4 2. Has a record of law violations prior to court
5 hearings;
6 3. Has already been detained or has been released and
7 is awaiting final disposition of the case;
8 4. Has a record of violent conduct resulting in
9 physical injury to others; or
10 5. Is found to have been in possession of a firearm.
11 (h) The child is alleged to have violated the
12 conditions of the child's community control or aftercare
13 supervision. However, a child detained under this paragraph
14 may be held only in a consequence unit as provided in s.
15 985.231(1)(a)1.c. If a consequence unit is not available, the
16 child shall be placed on home detention with electronic
17 monitoring.
18 (i) The child is charged with failure to appear.
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20 A child who meets any of these criteria and who is ordered to
21 be detained pursuant to this subsection shall be given a
22 hearing within 24 hours after being taken into custody. The
23 purpose of the detention hearing is to determine the existence
24 of probable cause that the child has committed the delinquent
25 act or violation of law with which he or she is charged and
26 the need for continued detention. Unless a child is detained
27 under paragraph (d), ~~or~~ paragraph (e), or paragraph (i), the
28 court shall utilize the results of the risk assessment
29 performed by the juvenile probation officer and, based on the
30 criteria in this subsection, shall determine the need for
31 continued detention. A child placed into secure, nonsecure, or

1 home detention care may continue to be so detained by the
2 court pursuant to this subsection. If the court orders a
3 placement more restrictive than indicated by the results of
4 the risk assessment instrument, the court shall state, in
5 writing, clear and convincing reasons for such placement.
6 Except as provided in s. 790.22(8) or in subparagraph
7 (10)(a)2., paragraph (10)(b), paragraph (10)(c), or paragraph
8 (10)(d), when a child is placed into secure or nonsecure
9 detention care, or into a respite home or other placement
10 pursuant to a court order following a hearing, the court order
11 must include specific instructions that direct the release of
12 the child from such placement no later than 5 p.m. on the last
13 day of the detention period specified in paragraph (5)(b) or
14 paragraph (5)(c), or subparagraph (10)(a)1., whichever is
15 applicable, unless the requirements of such applicable
16 provision have been met or an order of continuance has been
17 granted pursuant to paragraph (5)(d).

18 (5)(a) A child may not be placed into or held in
19 secure, nonsecure, or home detention care for longer than 24
20 hours unless the court orders such detention care, and the
21 order includes specific instructions that direct the release
22 of the child from such detention care, in accordance with
23 subsection (2). The order shall be a final order, reviewable
24 by appeal pursuant to s. 985.234 and the Florida Rules of
25 Appellate Procedure. Appeals of such orders shall take
26 precedence over other appeals and other pending matters.

27 (b) A child may not be held in secure, nonsecure, or
28 home detention care under a special detention order for more
29 than 21 days unless an adjudicatory hearing for the case has
30 been commenced by the court. However, if a child is charged
31 with failure to appear, the child may be held in secure

1 detention for a total of 28 days prior to commencement of the
2 adjudicatory hearing.

3 (c) A child may not be held in secure, nonsecure, or
4 home detention care for more than 15 days following the entry
5 of an order of adjudication.

6 (d) The time limits in paragraphs (b) and (c) do not
7 include periods of delay resulting from a continuance granted
8 by the court for cause on motion of the child or his or her
9 counsel or of the state. Upon the issuance of an order
10 granting a continuance for cause on a motion by either the
11 child, the child's counsel, or the state, the court shall
12 conduct a hearing at the end of each 72-hour period, excluding
13 Saturdays, Sundays, and legal holidays, to determine the need
14 for continued detention of the child and the need for further
15 continuance of proceedings for the child or the state.

16 Section 3. For the purpose of incorporating the
17 amendments made by this act to section 985.215, Florida
18 Statutes, in references thereto, subsection (8) of section
19 790.22, Florida Statutes, is reenacted to read:

20 790.22 Use of BB guns, air or gas-operated guns, or
21 electric weapons or devices by minor under 16; limitation;
22 possession of firearms by minor under 18 prohibited;
23 penalties.--

24 (8) Notwithstanding s. 985.213 or s. 985.215(1), if a
25 minor under 18 years of age is charged with an offense that
26 involves the use or possession of a firearm, as defined in s.
27 790.001, including a violation of subsection (3), or is
28 charged for any offense during the commission of which the
29 minor possessed a firearm, the minor shall be detained in
30 secure detention, unless the state attorney authorizes the
31 release of the minor, and shall be given a hearing within 24

1 hours after being taken into custody. At the hearing, the
2 court may order that the minor continue to be held in secure
3 detention in accordance with the applicable time periods
4 specified in s. 985.215(5), if the court finds that the minor
5 meets the criteria specified in s. 985.215(2), or if the court
6 finds by clear and convincing evidence that the minor is a
7 clear and present danger to himself or herself or the
8 community. The Department of Juvenile Justice shall prepare a
9 form for all minors charged under this subsection that states
10 the period of detention and the relevant demographic
11 information, including, but not limited to, the sex, age, and
12 race of the minor; whether or not the minor was represented by
13 private counsel or a public defender; the current offense; and
14 the minor's complete prior record, including any pending
15 cases. The form shall be provided to the judge to be
16 considered when determining whether the minor should be
17 continued in secure detention under this subsection. An order
18 placing a minor in secure detention because the minor is a
19 clear and present danger to himself or herself or the
20 community must be in writing, must specify the need for
21 detention and the benefits derived by the minor or the
22 community by placing the minor in secure detention, and must
23 include a copy of the form provided by the department. The
24 Department of Juvenile Justice must send the form, including a
25 copy of any order, without client-identifying information, to
26 the Office of Economic and Demographic Research.

27 Section 4. For the purpose of incorporating the
28 amendments made by this act to section 985.215, Florida
29 Statutes, in references thereto, subsection (1) of section
30 985.208, Florida Statutes, is reenacted to read:

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1 985.208 Detention of escapee on authority of the
2 department.--

3 (1) If an authorized agent of the department has
4 reasonable grounds to believe that any delinquent child
5 committed to the department has escaped from a facility of the
6 department or from being lawfully transported thereto or
7 therefrom, the agent may take the child into active custody
8 and may deliver the child to the facility or, if it is closer,
9 to a detention center for return to the facility. However, a
10 child may not be held in detention longer than 24 hours,
11 excluding Saturdays, Sundays, and legal holidays, unless a
12 special order so directing is made by the judge after a
13 detention hearing resulting in a finding that detention is
14 required based on the criteria in s. 985.215(2). The order
15 shall state the reasons for such finding. The reasons shall be
16 reviewable by appeal or in habeas corpus proceedings in the
17 district court of appeal.

18 Section 5. For the purpose of incorporating the
19 amendments made by this act to section 985.215, Florida
20 Statutes, in references thereto, subsection (2) of section
21 985.213, Florida Statutes, is reenacted to read:

22 985.213 Use of detention.--

23 (2)(a) All determinations and court orders regarding
24 placement of a child into detention care shall comply with all
25 requirements and criteria provided in this part and shall be
26 based on a risk assessment of the child, unless the child is
27 placed into detention care as provided in subparagraph (b)3.

28 (b)1. The risk assessment instrument for detention
29 care placement determinations and orders shall be developed by
30 the Department of Juvenile Justice in agreement with
31 representatives appointed by the following associations: the

1 Conference of Circuit Judges of Florida, the Prosecuting
2 Attorneys Association, and the Public Defenders Association.
3 Each association shall appoint two individuals, one
4 representing an urban area and one representing a rural area.
5 The parties involved shall evaluate and revise the risk
6 assessment instrument as is considered necessary using the
7 method for revision as agreed by the parties. The risk
8 assessment instrument shall take into consideration, but need
9 not be limited to, prior history of failure to appear, prior
10 offenses, offenses committed pending adjudication, any
11 unlawful possession of a firearm, theft of a motor vehicle or
12 possession of a stolen motor vehicle, and community control
13 status at the time the child is taken into custody. The risk
14 assessment instrument shall also take into consideration
15 appropriate aggravating and mitigating circumstances, and
16 shall be designed to target a narrower population of children
17 than s. 985.215(2). The risk assessment instrument shall also
18 include any information concerning the child's history of
19 abuse and neglect. The risk assessment shall indicate whether
20 detention care is warranted, and, if detention care is
21 warranted, whether the child should be placed into secure,
22 nonsecure, or home detention care.

23 2. If, at the detention hearing, the court finds a
24 material error in the scoring of the risk assessment
25 instrument, the court may amend the score to reflect factual
26 accuracy.

27 3. A child who is charged with committing an offense
28 of domestic violence as defined in s. 741.28(1) and who does
29 not meet detention criteria may be held in secure detention if
30 the court makes specific written findings that:

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- 1 a. The offense of domestic violence which the child is
2 charged with committing caused physical injury to the victim;
3 b. Respite care for the child is not available; and
4 c. It is necessary to place the child in secure
5 detention in order to protect the victim from further injury.

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7 The child may not be held in secure detention under this
8 subparagraph for more than 48 hours unless ordered by the
9 court. After 48 hours, the court shall hold a hearing if the
10 state attorney or victim requests that secure detention be
11 continued. The child may continue to be held in secure
12 detention if the court makes a specific, written finding that
13 secure detention is necessary to protect the victim from
14 further injury. However, the child may not be held in secure
15 detention beyond the time limits set forth in s. 985.215.

16 Section 6. For the purpose of incorporating the
17 amendments made by this act to section 985.215, Florida
18 Statutes, in references thereto, subsection (1) of section
19 985.228, Florida Statutes, is reenacted to read:

20 985.228 Adjudicatory hearings; withheld adjudications;
21 orders of adjudication.--

22 (1) The adjudicatory hearing must be held as soon as
23 practicable after the petition alleging that a child has
24 committed a delinquent act or violation of law is filed and in
25 accordance with the Florida Rules of Juvenile Procedure; but
26 reasonable delay for the purpose of investigation, discovery,
27 or procuring counsel or witnesses shall be granted. If the
28 child is being detained, the time limitations provided for in
29 s. 985.215(5)(b) and (c) apply.

30 Section 7. This act shall take effect October 1, 2000.

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SENATE SUMMARY

Provides that it is a violation of law for a juvenile to fail to appear as required by the court. Provides that a juvenile charged with failure to appear may be held in detention for up to 28 days before the adjudicatory hearing is commenced.