

By Senator Siplin

19-02475-08

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1 A bill to be entitled

2 An act relating to juvenile proceedings; amending s.
3 985.35, F.S.; requiring the Department of Juvenile Justice
4 to adopt rules governing the procedures that may be used
5 to restrain a child upon his or her arrival at the
6 courthouse; prohibiting the use of instruments of
7 restraint on a child after the child arrives at the
8 courthouse; prohibiting subjecting a child to extended
9 periods of isolation; providing specified exemptions;
10 amending s. 985.483, F.S.; conforming a cross-reference;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 985.35, Florida Statutes, is amended to
16 read:

17 985.35 Adjudicatory hearings; withheld adjudications;
18 orders of adjudication.--

19 (1) The adjudicatory hearing must be held as soon as
20 practicable after the petition alleging that a child has
21 committed a delinquent act or violation of law is filed and in
22 accordance with the Florida Rules of Juvenile Procedure; but
23 reasonable delay for the purpose of investigation, discovery, or
24 procuring counsel or witnesses shall be granted. If the child is
25 being detained, the time limitations in s. 985.26(2) and (3)
26 apply. The department shall adopt by rule procedures for
27 restraining a child upon his or her arrival at the courthouse.
28 The rules must prohibit the use of mechanical devices and

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29 unreasonable restraints. In addition, a child may not be subject
30 to extended periods of isolation.

31 (2) Adjudicatory hearings shall be conducted without a jury
32 by the court, applying in delinquency cases the rules of evidence
33 in use in criminal cases; adjourning the hearings from time to
34 time as necessary; and conducting a fundamentally fair hearing in
35 language understandable, to the fullest extent practicable, to
36 the child before the court.

37 (a) In a hearing on a petition alleging that a child has
38 committed a delinquent act or violation of law, the evidence must
39 establish the findings beyond a reasonable doubt.

40 (b) The child is entitled to the opportunity to introduce
41 evidence and otherwise be heard in the child's own behalf and to
42 cross-examine witnesses.

43 (c) A child charged with a delinquent act or violation of
44 law must be afforded all rights against self-incrimination.
45 Evidence illegally seized or obtained may not be received to
46 establish the allegations against the child.

47 (3) Instruments of restraint, such as handcuffs, chains,
48 irons, or straitjackets, may not be used on a child after his or
49 her arrival at the courthouse unless the child:

50 (a) Is likely to attempt to escape during a transfer or a
51 hearing;

52 (b) Is charged with a capital offense; or

53 (c) Has a history of disruptive behavior and there is a
54 likelihood that the child will cause bodily harm to himself,
55 herself, or others.

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56 (4)~~(3)~~ If the court finds that the child named in a
57 petition has not committed a delinquent act or violation of law,
58 it shall enter an order so finding and dismissing the case.

59 (5)~~(4)~~ If the court finds that the child named in the
60 petition has committed a delinquent act or violation of law, it
61 may, in its discretion, enter an order stating the facts upon
62 which its finding is based but withholding adjudication of
63 delinquency.

64 (a) Upon withholding adjudication of delinquency, the court
65 may place the child in a probation program under the supervision
66 of the department or under the supervision of any other person or
67 agency specifically authorized and appointed by the court. The
68 court may, as a condition of the program, impose as a penalty
69 component restitution in money or in kind, community service, a
70 curfew, urine monitoring, revocation or suspension of the
71 driver's license of the child, or other nonresidential punishment
72 appropriate to the offense, and may impose as a rehabilitative
73 component a requirement of participation in substance abuse
74 treatment, or school or other educational program attendance.

75 (b) If the child is attending public school and the court
76 finds that the victim or a sibling of the victim in the case was
77 assigned to attend or is eligible to attend the same school as
78 the child, the court order shall include a finding pursuant to
79 the proceedings described in s. 985.455, regardless of whether
80 adjudication is withheld.

81 (c) If the court later finds that the child has not
82 complied with the rules, restrictions, or conditions of the
83 community-based program, the court may, after a hearing to
84 establish the lack of compliance, but without further evidence of

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85 | the state of delinquency, enter an adjudication of delinquency
86 | and shall thereafter have full authority under this chapter to
87 | deal with the child as adjudicated.

88 | (6)~~(5)~~ If the court finds that the child named in a
89 | petition has committed a delinquent act or violation of law, but
90 | elects not to proceed under subsection (4), it shall incorporate
91 | that finding in an order of adjudication of delinquency entered
92 | in the case, briefly stating the facts upon which the finding is
93 | made, and the court shall thereafter have full authority under
94 | this chapter to deal with the child as adjudicated.

95 | (7)~~(6)~~ Except as the term "conviction" is used in chapter
96 | 322, and except for use in a subsequent proceeding under this
97 | chapter, an adjudication of delinquency by a court with respect
98 | to any child who has committed a delinquent act or violation of
99 | law shall not be deemed a conviction; nor shall the child be
100 | deemed to have been found guilty or to be a criminal by reason of
101 | that adjudication; nor shall that adjudication operate to impose
102 | upon the child any of the civil disabilities ordinarily imposed
103 | by or resulting from conviction or to disqualify or prejudice the
104 | child in any civil service application or appointment, with the
105 | exception of the use of records of proceedings under this chapter
106 | as provided in s. 985.045(4).

107 | (8)~~(7)~~ Notwithstanding any other provision of law, an
108 | adjudication of delinquency for an offense classified as a felony
109 | shall disqualify a person from lawfully possessing a firearm
110 | until such person reaches 24 years of age.

111 | Section 2. Subsection (2) of section 985.483, Florida
112 | Statutes, is amended to read:

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113 985.483 Intensive residential treatment program for
114 offenders less than 13 years of age.--

115 (2) DETERMINATION.--After a child has been adjudicated
116 delinquent under s. 985.35(6) ~~s. 985.35(5)~~, the court shall
117 determine whether the child is eligible for an intensive
118 residential treatment program for offenders less than 13 years of
119 age under subsection (1). If the court determines that the child
120 does not meet the criteria, ss. 985.435, 985.437, 985.439,
121 985.441, 985.445, 985.45, and 985.455 shall apply.

122 Section 3. This act shall take effect July 1, 2008.