

By Senator Storms

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1 A bill to be entitled

2 An act relating to juvenile justice; amending s. 985.255,
3 F.S.; providing that it is a violation of law for a
4 juvenile to fail to appear as required before a court or
5 judicial officer; revising provisions relating to
6 detention of a juvenile for failure to appear; conforming
7 cross-references; amending s. 985.26, F.S.; providing for
8 holding a child charged with failure to appear in secure
9 detention for a specified period; providing exceptions to
10 specified detention time limits; amending s. 985.245,
11 F.S.; conforming a cross-reference; amending s. 985.27,
12 F.S.; requiring that juveniles held pending specified
13 placements or commitments be held in secure detention;
14 amending s. 985.43, F.S.; conforming a cross-reference;
15 reenacting and amending s. 790.22(8), F.S., relating to
16 use of BB guns, air or gas-operated guns, or electric
17 weapons or devices by minors under 16, to incorporate the
18 amendment to s. 985.255, F.S., in references thereto;
19 conforming a cross-reference; reenacting ss. 985.275(1)
20 and 985.319(6), F.S., relating to detention of escapee or
21 absconder on authority of the Department of Juvenile
22 Justice and to process and service, respectively, to
23 incorporate the amendment to s. 985.255, F.S., in
24 references thereto; reenacting s. 985.35(1), F.S.,
25 relating to adjudicatory hearings, withheld adjudications,
26 and orders of adjudication, to incorporate the amendment
27 to s. 985.26, F.S., in a reference thereto; providing an
28 effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Section 985.255, Florida Statutes, is amended to
33 read:

34 985.255 Detention criteria; detention hearing.--

35 (1) Any child who fails to appear before the court or a
36 judicial officer as required commits a violation of law. The
37 court may order that the child be taken into custody and placed
38 into secure, nonsecure, or home detention care as provided in
39 this section.

40 (2)(1) Subject to s. 985.25(1), a child taken into custody
41 and placed into nonsecure or home detention care or detained in
42 secure detention care prior to a detention hearing may continue
43 to be detained by the court if:

44 (a) The child is alleged to be an escapee from a
45 residential commitment program; or an absconder from a
46 nonresidential commitment program, a probation program, or
47 conditional release supervision; or is alleged to have escaped
48 while being lawfully transported to or from a residential
49 commitment program.

50 (b) The child is wanted in another jurisdiction for an
51 offense which, if committed by an adult, would be a felony.

52 (c) The child is charged with a delinquent act or violation
53 of law and requests in writing through legal counsel to be
54 detained for protection from an imminent physical threat to his
55 or her personal safety.

56 (d) The child is charged with committing an offense of
57 domestic violence as defined in s. 741.28 and is detained as
58 provided in subsection (3) ~~(2)~~.

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59 (e) The child is charged with possession or discharging a
60 firearm on school property in violation of s. 790.115.

61 (f) The child is charged with a capital felony, a life
62 felony, a felony of the first degree, a felony of the second
63 degree that does not involve a violation of chapter 893, or a
64 felony of the third degree that is also a crime of violence,
65 including any such offense involving the use or possession of a
66 firearm.

67 (g) The child is charged with any second degree or third
68 degree felony involving a violation of chapter 893 or any third
69 degree felony that is not also a crime of violence, and the
70 child:

- 71 1. Has a record of failure to appear at court hearings
72 after being properly notified in accordance with the Rules of
73 Juvenile Procedure;
- 74 2. Has a record of law violations prior to court hearings;
- 75 3. Has already been detained or has been released and is
76 awaiting final disposition of the case;
- 77 4. Has a record of violent conduct resulting in physical
78 injury to others; or
- 79 5. Is found to have been in possession of a firearm.

80 (h) The child is alleged to have violated the conditions of
81 the child's probation or conditional release supervision.
82 However, a child detained under this paragraph may be held only
83 in a consequence unit as provided in s. 985.439. If a consequence
84 unit is not available, the child shall be placed on home
85 detention with electronic monitoring.

86 (i) The child is charged with failure to appear. ~~The child~~
87 ~~is detained on a judicial order for failure to appear and has~~

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88 ~~previously willfully failed to appear, after proper notice, for~~
89 ~~an adjudicatory hearing on the same case regardless of the~~
90 ~~results of the risk assessment instrument. A child may be held in~~
91 ~~secure detention for up to 72 hours in advance of the next~~
92 ~~scheduled court hearing pursuant to this paragraph. The child's~~
93 ~~failure to keep the clerk of court and defense counsel informed~~
94 ~~of a current and valid mailing address where the child will~~
95 ~~receive notice to appear at court proceedings does not provide an~~
96 ~~adequate ground for excusal of the child's nonappearance at the~~
97 ~~hearings.~~

98 ~~(j) The child is detained on a judicial order for failure~~
99 ~~to appear and has previously willfully failed to appear, after~~
100 ~~proper notice, at two or more court hearings of any nature on the~~
101 ~~same case regardless of the results of the risk assessment~~
102 ~~instrument. A child may be held in secure detention for up to 72~~
103 ~~hours in advance of the next scheduled court hearing pursuant to~~
104 ~~this paragraph. The child's failure to keep the clerk of court~~
105 ~~and defense counsel informed of a current and valid mailing~~
106 ~~address where the child will receive notice to appear at court~~
107 ~~proceedings does not provide an adequate ground for excusal of~~
108 ~~the child's nonappearance at the hearings.~~

109 (3)~~(2)~~ A child who is charged with committing an offense of
110 domestic violence as defined in s. 741.28 and who does not meet
111 detention criteria may be held in secure detention if the court
112 makes specific written findings that:

113 (a) Respite care for the child is not available.

114 (b) It is necessary to place the child in secure detention
115 in order to protect the victim from injury.

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117 The child may not be held in secure detention under this
118 subsection for more than 48 hours unless ordered by the court.
119 After 48 hours, the court shall hold a hearing if the state
120 attorney or victim requests that secure detention be continued.
121 The child may continue to be held in detention care if the court
122 makes a specific, written finding that detention care is
123 necessary to protect the victim from injury. However, the child
124 may not be held in detention care beyond the time limits set
125 forth in this section or s. 985.26.

126 (4)~~(3)~~(a) A child who meets any of the criteria in
127 subsection (2) ~~(1)~~ and who is ordered to be detained under that
128 subsection shall be given a hearing within 24 hours after being
129 taken into custody. The purpose of the detention hearing is to
130 determine the existence of probable cause that the child has
131 committed the delinquent act or violation of law that he or she
132 is charged with and the need for continued detention. Unless a
133 child is detained under paragraph (2) (d), ~~(1) (d)~~ or paragraph
134 (2) (e), or paragraph (2) (i) ~~(1) (e)~~, the court shall use the
135 results of the risk assessment performed by the juvenile
136 probation officer and, based on the criteria in subsection
137 (2) (1), shall determine the need for continued detention. A child
138 placed into secure, nonsecure, or home detention care may
139 continue to be so detained by the court.

140 (b) If the court orders a placement more restrictive than
141 indicated by the results of the risk assessment instrument, the
142 court shall state, in writing, clear and convincing reasons for
143 such placement.

144 (c) Except as provided in s. 790.22(8) or in s. 985.27,
145 when a child is placed into secure or nonsecure detention care,

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146 or into a respite home or other placement pursuant to a court
147 order following a hearing, the court order must include specific
148 instructions that direct the release of the child from such
149 placement no later than 5 p.m. on the last day of the detention
150 period specified in s. 985.26 or s. 985.27, whichever is
151 applicable, unless the requirements of such applicable provision
152 have been met or an order of continuance has been granted under
153 s. 985.26(4).

154 Section 2. Subsection (2) of section 985.26, Florida
155 Statutes, is amended, subsections (5) and (6) of that section are
156 renumbered as subsections (6) and (7), respectively, and a new
157 subsection (5) is added to that section, to read:

158 985.26 Length of detention.--

159 (2) A child may not be held in secure, nonsecure, or home
160 detention care under a special detention order for more than 21
161 days unless an adjudicatory hearing for the case has been
162 commenced in good faith by the court. However, upon good cause
163 being shown that the nature of the charge requires additional
164 time for the prosecution or defense of the case, the court may
165 extend the length of detention for an additional 9 days if the
166 child is charged with an offense that would be, if committed by
167 an adult, a capital felony, a life felony, a felony of the first
168 degree, or a felony of the second degree involving violence
169 against any individual. However, if a child is charged with
170 failure to appear for a felony offense, the child shall be held
171 in secure detention for a total of 28 days prior to commencement
172 of the adjudicatory hearing. If a child is charged with failure
173 to appear for a misdemeanor offense, the child may be held in

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174 secure detention for a total of 28 days prior to commencement of
175 the adjudicatory hearing.

176 (5) (a) The detention time limits in subsections (2) and (3)
177 do not apply as follows:

178 1. Each time a child is charged with failure to appear, the
179 child may be held in secure detention for up to 28 additional
180 days prior to commencement of the adjudicatory hearing.

181 2. Each time a child is charged with a violation of
182 probation or postcommitment probation, the child may be held in
183 secure detention for up to 28 additional days prior to
184 commencement of the adjudicatory hearing.

185 3. Each time a child is charged with violating his or her
186 home detention care, nonsecure detention care, or electronic
187 monitoring prior to the commencement of the adjudicatory hearing,
188 the child may be held for up to 28 additional days for each
189 violation.

190 4. Each time a child is charged with violating his or her
191 home detention care, nonsecure detention care, or electronic
192 monitoring subsequent to the adjudicatory hearing, the child may
193 be held for up to 5 additional days for each violation while
194 awaiting placement.

195 (b) Each incident of cutting, altering, or otherwise
196 tampering with any electronic monitoring equipment is a separate
197 violation of the terms and conditions of electronic monitoring
198 and may also be charged as a separate delinquent act.

199 Section 3. Subsection (1) of section 985.245, Florida
200 Statutes, is amended to read:

201 985.245 Risk assessment instrument.--

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202 (1) All determinations and court orders regarding placement
203 of a child into detention care shall comply with all requirements
204 and criteria provided in this part and shall be based on a risk
205 assessment of the child, unless the child is placed into
206 detention care as provided in s. 985.255(3)~~(2)~~.

207 Section 4. Paragraphs (c) and (d) of subsection (1) of
208 section 985.27, Florida Statutes, are amended to read:

209 985.27 Postcommitment detention while awaiting placement.--

210 (1) The court must place all children who are adjudicated
211 and awaiting placement in a commitment program in detention care.
212 Children who are in home detention care or nonsecure detention
213 care may be placed on electronic monitoring.

214 (c) If the child is committed to a high-risk residential
215 program, the child must be held in secure detention care until
216 placement or commitment is accomplished.

217 (d) If the child is committed to a maximum-risk residential
218 program, the child must be held in secure detention care until
219 placement or commitment is accomplished.

220 Section 5. Paragraph (c) of subsection (1) of section
221 985.43, Florida Statutes, is amended to read:

222 985.43 Predisposition reports; other evaluations.--

223 (1) Upon a finding that the child has committed a
224 delinquent act:

225 (c) A child who was not in secure detention at the time of
226 the adjudicatory hearing, but for whom residential commitment is
227 anticipated or recommended, may be placed under a special
228 detention order, as provided in s. 985.26(6)~~(5)~~, for the purpose
229 of conducting a comprehensive evaluation.

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230 Section 6. For the purpose of incorporating the amendment
231 made by this act to section 985.255, Florida Statutes, in a
232 reference thereto, subsection (8) of section 790.22, Florida
233 Statutes, is reenacted and amended to read:

234 790.22 Use of BB guns, air or gas-operated guns, or
235 electric weapons or devices by minor under 16; limitation;
236 possession of firearms by minor under 18 prohibited; penalties.--

237 (8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor
238 under 18 years of age is charged with an offense that involves
239 the use or possession of a firearm, as defined in s. 790.001,
240 including a violation of subsection (3), or is charged for any
241 offense during the commission of which the minor possessed a
242 firearm, the minor shall be detained in secure detention, unless
243 the state attorney authorizes the release of the minor, and shall
244 be given a hearing within 24 hours after being taken into
245 custody. At the hearing, the court may order that the minor
246 continue to be held in secure detention in accordance with the
247 applicable time periods specified in s. 985.26(1)-(6)~~(1)-(5)~~, if
248 the court finds that the minor meets the criteria specified in s.
249 985.255, or if the court finds by clear and convincing evidence
250 that the minor is a clear and present danger to himself or
251 herself or the community. The Department of Juvenile Justice
252 shall prepare a form for all minors charged under this subsection
253 that states the period of detention and the relevant demographic
254 information, including, but not limited to, the sex, age, and
255 race of the minor; whether or not the minor was represented by
256 private counsel or a public defender; the current offense; and
257 the minor's complete prior record, including any pending cases.
258 The form shall be provided to the judge to be considered when

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259 determining whether the minor should be continued in secure
260 detention under this subsection. An order placing a minor in
261 secure detention because the minor is a clear and present danger
262 to himself or herself or the community must be in writing, must
263 specify the need for detention and the benefits derived by the
264 minor or the community by placing the minor in secure detention,
265 and must include a copy of the form provided by the department.
266 The Department of Juvenile Justice must send the form, including
267 a copy of any order, without client-identifying information, to
268 the Office of Economic and Demographic Research.

269 Section 7. For the purpose of incorporating the amendment
270 made by this act to section 985.255, Florida Statutes, in a
271 reference thereto, subsection (1) of section 985.275, Florida
272 Statutes, is reenacted to read:

273 985.275 Detention of escapee or absconder on authority of
274 the department.--

275 (1) If an authorized agent of the department has reasonable
276 grounds to believe that any delinquent child committed to the
277 department has escaped from a residential commitment facility or
278 from being lawfully transported thereto or therefrom, or has
279 absconded from a nonresidential commitment facility, the agent
280 may take the child into active custody and may deliver the child
281 to the facility or, if it is closer, to a detention center for
282 return to the facility. However, a child may not be held in
283 detention longer than 24 hours, excluding Saturdays, Sundays, and
284 legal holidays, unless a special order so directing is made by
285 the judge after a detention hearing resulting in a finding that
286 detention is required based on the criteria in s. 985.255. The
287 order shall state the reasons for such finding. The reasons shall

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288 | be reviewable by appeal or in habeas corpus proceedings in the
289 | district court of appeal.

290 | Section 8. For the purpose of incorporating the amendment
291 | made by this act to section 985.255, Florida Statutes, in a
292 | reference thereto, subsection (6) of section 985.319, Florida
293 | Statutes, is reenacted to read:

294 | 985.319 Process and service.--

295 | (6) If the petition alleges that the child has committed a
296 | delinquent act or violation of law and the judge deems it
297 | advisable to do so, under the criteria of s. 985.255, the judge
298 | may, by endorsement upon the summons and after the entry of an
299 | order in which valid reasons are specified, order the child to be
300 | taken into custody immediately, and in such case the person
301 | serving the summons shall immediately take the child into
302 | custody.

303 | Section 9. For the purpose of incorporating the amendment
304 | made by this act to section 985.26, Florida Statutes, in a
305 | reference thereto, subsection (1) of section 985.35, Florida
306 | Statutes, is reenacted to read:

307 | 985.35 Adjudicatory hearings; withheld adjudications;
308 | orders of adjudication.--

309 | (1) The adjudicatory hearing must be held as soon as
310 | practicable after the petition alleging that a child has
311 | committed a delinquent act or violation of law is filed and in
312 | accordance with the Florida Rules of Juvenile Procedure; but
313 | reasonable delay for the purpose of investigation, discovery, or
314 | procuring counsel or witnesses shall be granted. If the child is
315 | being detained, the time limitations in s. 985.26(2) and (3)
316 | apply.

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Section 10. This act shall take effect October 1, 2008.