

HB 981

2008

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; providing an effective date.

25  
26   Be It Enacted by the Legislature of the State of Florida:  
27

28 Section 1. Section 985.255, Florida Statutes, is amended  
 29 to read:

30 985.255 Detention criteria; detention hearing.--

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

36 (2)~~(1)~~ Subject to s. 985.25(1), a child taken into custody  
 37 and placed into nonsecure or home detention care or detained in  
 38 secure detention care prior to a detention hearing may continue  
 39 to be detained by the court if:

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

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

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

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

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

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

63 (g) The child is charged with any second degree or third  
 64 degree felony involving a violation of chapter 893 or any third  
 65 degree felony that is not also a crime of violence, and the  
 66 child:

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

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

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82            (i) The child is charged with failure to appear. ~~The child~~  
83 ~~is detained on a judicial order for failure to appear and has~~  
84 ~~previously willfully failed to appear, after proper notice, for~~  
85 ~~an adjudicatory hearing on the same case regardless of the~~  
86 ~~results of the risk assessment instrument. A child may be held~~  
87 ~~in secure detention for up to 72 hours in advance of the next~~  
88 ~~scheduled court hearing pursuant to this paragraph. The child's~~  
89 ~~failure to keep the clerk of court and defense counsel informed~~  
90 ~~of a current and valid mailing address where the child will~~  
91 ~~receive notice to appear at court proceedings does not provide~~  
92 ~~an adequate ground for excusal of the child's nonappearance at~~  
93 ~~the hearings.~~

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

105            (3)~~(2)~~ A child who is charged with committing an offense  
106 of domestic violence as defined in s. 741.28 and who does not  
107 meet detention criteria may be held in secure detention if the  
108 court makes specific written findings that:

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

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

112  
 113 The child may not be held in secure detention under this  
 114 subsection for more than 48 hours unless ordered by the court.  
 115 After 48 hours, the court shall hold a hearing if the state  
 116 attorney or victim requests that secure detention be continued.  
 117 The child may continue to be held in detention care if the court  
 118 makes a specific, written finding that detention care is  
 119 necessary to protect the victim from injury. However, the child  
 120 may not be held in detention care beyond the time limits set  
 121 forth in this section or s. 985.26.

122 ~~(4)(3)~~(a) A child who meets any of the criteria in  
 123 subsection ~~(2)(1)~~ and who is ordered to be detained under that  
 124 subsection shall be given a hearing within 24 hours after being  
 125 taken into custody. The purpose of the detention hearing is to  
 126 determine the existence of probable cause that the child has  
 127 committed the delinquent act or violation of law that he or she  
 128 is charged with and the need for continued detention. Unless a  
 129 child is detained under paragraph ~~(2)(1)(d)~~, ~~or~~ paragraph  
 130 (2)(1)(e), or paragraph (2)(i), the court shall use the results  
 131 of the risk assessment performed by the juvenile probation  
 132 officer and, based on the criteria in subsection ~~(2)(1)~~, shall  
 133 determine the need for continued detention. A child placed into  
 134 secure, nonsecure, or home detention care may continue to be so  
 135 detained by the court.

136 (b) If the court orders a placement more restrictive than  
 137 indicated by the results of the risk assessment instrument, the

138 court shall state, in writing, clear and convincing reasons for  
 139 such placement.

140 (c) Except as provided in s. 790.22(8) or in s. 985.27,  
 141 when a child is placed into secure or nonsecure detention care,  
 142 or into a respite home or other placement pursuant to a court  
 143 order following a hearing, the court order must include specific  
 144 instructions that direct the release of the child from such  
 145 placement no later than 5 p.m. on the last day of the detention  
 146 period specified in s. 985.26 or s. 985.27, whichever is  
 147 applicable, unless the requirements of such applicable provision  
 148 have been met or an order of continuance has been granted under  
 149 s. 985.26(4).

150 Section 2. Subsections (5) and (6) of section 985.26,  
 151 Florida Statutes, are renumbered as subsections (6) and (7),  
 152 respectively, and a new subsection (5) is added to that section,  
 153 to read:

154 985.26 Length of detention.--

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

157 1. Each time a child is charged with failure to appear for  
 158 a felony, the child should be held in secure detention for up to  
 159 28 additional days prior to commencement of the adjudicatory  
 160 hearing. Each time a child is charged with failure to appear for  
 161 a misdemeanor, the child may be held in secure detention for up  
 162 to 28 additional days prior to the commencement of the  
 163 adjudicatory hearing.

164 2. Each time a child is charged with a violation of  
 165 probation or postcommitment probation, the child may be held in

166 secure detention for up to 28 additional days prior to  
 167 commencement of the adjudicatory hearing.

168 3. Each time a child is charged with violating his or her  
 169 home detention care, nonsecure detention care, or electronic  
 170 monitoring prior to the commencement of the adjudicatory  
 171 hearing, the child may be held for up to 28 additional days for  
 172 each violation.

173 4. Each time a child is charged with violating his or her  
 174 home detention care, nonsecure detention care, or electronic  
 175 monitoring subsequent to the adjudicatory hearing, the child may  
 176 be held for up to 5 additional days for each violation while  
 177 awaiting placement.

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

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

184 985.245 Risk assessment instrument.--

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

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

192 985.27 Postcommitment detention while awaiting  
 193 placement.--

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

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

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

204 Section 5. Paragraph (c) of subsection (1) of section  
 205 985.43, Florida Statutes, is amended to read:

206 985.43 Predisposition reports; other evaluations.--

207 (1) Upon a finding that the child has committed a  
 208 delinquent act:

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

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

218 790.22 Use of BB guns, air or gas-operated guns, or  
 219 electric weapons or devices by minor under 16; limitation;  
 220 possession of firearms by minor under 18 prohibited;  
 221 penalties.--



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

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250 minor in secure detention, and must include a copy of the form  
251 provided by the department. The Department of Juvenile Justice  
252 must send the form, including a copy of any order, without  
253 client-identifying information, to the Office of Economic and  
254 Demographic Research.

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

259 985.275 Detention of escapee or absconder on authority of  
260 the department.--

261 (1) If an authorized agent of the department has  
262 reasonable grounds to believe that any delinquent child  
263 committed to the department has escaped from a residential  
264 commitment facility or from being lawfully transported thereto  
265 or therefrom, or has absconded from a nonresidential commitment  
266 facility, the agent may take the child into active custody and  
267 may deliver the child to the facility or, if it is closer, to a  
268 detention center for return to the facility. However, a child  
269 may not be held in detention longer than 24 hours, excluding  
270 Saturdays, Sundays, and legal holidays, unless a special order  
271 so directing is made by the judge after a detention hearing  
272 resulting in a finding that detention is required based on the  
273 criteria in s. 985.255. The order shall state the reasons for  
274 such finding. The reasons shall be reviewable by appeal or in  
275 habeas corpus proceedings in the district court of appeal.

276 Section 8. For the purpose of incorporating the amendment  
277 made by this act to section 985.255, Florida Statutes, in a

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278 | reference thereto, subsection (6) of section 985.319, Florida  
279 | Statutes, is reenacted to read:

280 |       985.319 Process and service.--

281 |       (6) If the petition alleges that the child has committed a  
282 | delinquent act or violation of law and the judge deems it  
283 | advisable to do so, under the criteria of s. 985.255, the judge  
284 | may, by endorsement upon the summons and after the entry of an  
285 | order in which valid reasons are specified, order the child to  
286 | be taken into custody immediately, and in such case the person  
287 | serving the summons shall immediately take the child into  
288 | custody.

289 |       Section 9. This act shall take effect October 1, 2008.