

By Senator Siplin

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

14
15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Section 985.35, Florida Statutes, is amended to
18 read:

19 985.35 Adjudicatory hearings; withheld adjudications;
20 orders of adjudication.—

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

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30 The rules must prohibit the use of mechanical devices and
31 unreasonable restraints. In addition, a child may not be subject
32 to extended periods of isolation.

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

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

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

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

49 (3) Instruments of restraint, such as handcuffs, chains,
50 irons, or straitjackets, may not be used on a child during any
51 court proceeding and must be removed when the child appears
52 before the court unless:

53 (a) The court finds that the child is likely to attempt to
54 escape during a transfer or a hearing;

55 (b) The court is unable to find a less restrictive
56 alternative that, if available, would prevent physical harm to
57 personnel of the department, law enforcement officers, or the
58 bailiff;

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59 (c) The child is charged with a capital offense; or

60 (d) The child has a history of disruptive behavior and
61 there is a likelihood that the child will cause bodily harm to
62 himself or herself, or to others.

63
64 The department must comply with the Protective Action Response
65 Policy adopted pursuant to s. 985.645(2) whenever mechanical
66 restraints are used.

67 (4)~~(3)~~ If the court finds that the child named in a
68 petition has not committed a delinquent act or violation of law,
69 it shall enter an order so finding and dismissing the case.

70 (5)~~(4)~~ If the court finds that the child named in the
71 petition has committed a delinquent act or violation of law, it
72 may, in its discretion, enter an order stating the facts upon
73 which its finding is based but withholding adjudication of
74 delinquency.

75 (a) Upon withholding adjudication of delinquency, the court
76 may place the child in a probation program under the supervision
77 of the department or under the supervision of any other person
78 or agency specifically authorized and appointed by the court.
79 The court may, as a condition of the program, impose as a
80 penalty component restitution in money or in kind, community
81 service, a curfew, urine monitoring, revocation or suspension of
82 the driver's license of the child, or other nonresidential
83 punishment appropriate to the offense, and may impose as a
84 rehabilitative component a requirement of participation in
85 substance abuse treatment, or school or other educational
86 program attendance.

87 (b) If the child is attending public school and the court

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88 finds that the victim or a sibling of the victim in the case was
89 assigned to attend or is eligible to attend the same school as
90 the child, the court order shall include a finding pursuant to
91 the proceedings described in s. 985.455, regardless of whether
92 adjudication is withheld.

93 (c) If the court later finds that the child has not
94 complied with the rules, restrictions, or conditions of the
95 community-based program, the court may, after a hearing to
96 establish the lack of compliance, but without further evidence
97 of the state of delinquency, enter an adjudication of
98 delinquency and shall thereafter have full authority under this
99 chapter to deal with the child as adjudicated.

100 (6)~~(5)~~ If the court finds that the child named in a
101 petition has committed a delinquent act or violation of law, but
102 elects not to proceed under subsection (5) ~~(4)~~, it shall
103 incorporate that finding in an order of adjudication of
104 delinquency entered in the case, briefly stating the facts upon
105 which the finding is made, and the court shall thereafter have
106 full authority under this chapter to deal with the child as
107 adjudicated.

108 (7)~~(6)~~ Except as the term "conviction" is used in chapter
109 322, and except for use in a subsequent proceeding under this
110 chapter, an adjudication of delinquency by a court with respect
111 to any child who has committed a delinquent act or violation of
112 law shall not be deemed a conviction; nor shall the child be
113 deemed to have been found guilty or to be a criminal by reason
114 of that adjudication; nor shall that adjudication operate to
115 impose upon the child any of the civil disabilities ordinarily
116 imposed by or resulting from conviction or to disqualify or

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117 prejudice the child in any civil service application or
118 appointment, with the exception of the use of records of
119 proceedings under this chapter as provided in s. 985.045(4).

120 (8)~~(7)~~ Notwithstanding any other provision of law, an
121 adjudication of delinquency for an offense classified as a
122 felony shall disqualify a person from lawfully possessing a
123 firearm until such person reaches 24 years of age.

124 Section 2. Subsection (2) of section 985.483, Florida
125 Statutes, is amended to read:

126 985.483 Intensive residential treatment program for
127 offenders less than 13 years of age.—

128 (2) DETERMINATION.—After a child has been adjudicated
129 delinquent under s. 985.35(6) ~~s. 985.35(5)~~, the court shall
130 determine whether the child is eligible for an intensive
131 residential treatment program for offenders less than 13 years
132 of age under subsection (1). If the court determines that the
133 child does not meet the criteria, ss. 985.435, 985.437, 985.439,
134 985.441, 985.445, 985.45, and 985.455 shall apply.

135 Section 3. This act shall take effect July 1, 2009.