

By Senator Siplin

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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
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 except in specified
9 circumstances; prohibiting subjecting a child to
10 extended periods of isolation; amending s. 985.483,
11 F.S.; conforming a cross-reference; providing an
12 effective date.

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

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

18 985.35 Adjudicatory hearings; withheld adjudications;
19 orders of adjudication.—

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

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

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

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

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

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

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

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

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

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

57 (4)~~(3)~~ If the court finds that the child named in a
58 petition has not committed a delinquent act or violation of law,

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59 it shall enter an order so finding and dismissing the case.

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

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

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

83 (c) If the court later finds that the child has not
84 complied with the rules, restrictions, or conditions of the
85 community-based program, the court may, after a hearing to
86 establish the lack of compliance, but without further evidence
87 of the state of delinquency, enter an adjudication of

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88 delinquency and shall thereafter have full authority under this
89 chapter to deal with the child as adjudicated.

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

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

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

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

115 985.483 Intensive residential treatment program for
116 offenders less than 13 years of age.—

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117 (2) DETERMINATION.—After a child has been adjudicated
118 delinquent under s. 985.35(6) ~~s. 985.35(5)~~, the court shall
119 determine whether the child is eligible for an intensive
120 residential treatment program for offenders less than 13 years
121 of age under subsection (1). If the court determines that the
122 child does not meet the criteria, ss. 985.435, 985.437, 985.439,
123 985.441, 985.445, 985.45, and 985.455 shall apply.

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