

By Senator Brandes

24-01114-18

20181298__

1 A bill to be entitled
2 An act relating to juvenile justice; amending s.
3 985.26, F.S.; requiring that a prolific juvenile
4 offender be held in secure detention until a detention
5 hearing is held if the juvenile violated the
6 conditions of nonsecure detention; amending s.
7 985.433, F.S.; requiring a court to receive and
8 consider a predisposition report before committing a
9 child if the court determines that adjudication and
10 commitment to the Department of Juvenile Justice is
11 appropriate; providing that the predisposition report
12 is an indispensable prerequisite to commitment which
13 cannot be waived; conforming a cross-reference;
14 amending s. 985.672, F.S.; requiring that a board of
15 directors for the department's direct-support
16 organization be appointed according to the
17 organization's established bylaws; deleting a
18 provision relating to membership of the organization;
19 extending the date of a future repeal; reenacting ss.
20 790.22(8), 985.115(2), 985.13(2), 985.255(2) and
21 (3)(a) and (c), and 985.35(1)(a), F.S., relating to
22 detention of a minor for committing a crime and using
23 or possessing a firearm, releasing and delivery of a
24 child from custody, probable cause affidavits,
25 detention criteria and detention hearings, and
26 adjudicatory hearings, respectively, to incorporate
27 the amendment made to s. 985.26, F.S., in references
28 thereto; providing an effective date.
29

24-01114-18

20181298__

30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Subsection (2) of section 985.26, Florida
33 Statutes, is amended, and subsections (3) and (4) of that
34 section are republished, to read:

35 985.26 Length of detention.—

36 (2) (a) Except as provided in paragraph (b) or paragraph
37 (c), a child may not be held in detention care under a special
38 detention order for more than 21 days unless an adjudicatory
39 hearing for the case has been commenced in good faith by the
40 court.

41 (b) Upon good cause being shown that the nature of the
42 charge requires additional time for the prosecution or defense
43 of the case, the court may extend the length of detention for an
44 additional 9 days if the child is charged with an offense that
45 would be, if committed by an adult, a capital felony, a life
46 felony, a felony of the first degree, or a felony of the second
47 degree involving violence against any individual.

48 (c) 1. A prolific juvenile offender under s. 985.255(1)(j)
49 shall be placed on nonsecure detention care with electronic
50 monitoring or in secure detention care under a special detention
51 order until disposition. If secure detention care is ordered by
52 the court, it must be authorized under this part and may not
53 exceed:

54 ~~a.1.~~ Twenty-one days unless an adjudicatory hearing for the
55 case has been commenced in good faith by the court or the period
56 is extended by the court pursuant to paragraph (b); or

57 ~~b.2.~~ Fifteen days after the entry of an order of
58 adjudication.

24-01114-18

20181298__

59 2. A prolific juvenile offender who is taken into custody
60 for a violation of the conditions of his or her nonsecure
61 detention must be held in secure detention until a detention
62 hearing is held.

63
64 As used in this paragraph, the term "disposition" means a
65 declination to file under s. 985.15(1)(h), the entry of nolle
66 prosequi for the charges, the filing of an indictment under s.
67 985.56 or an information under s. 985.557, a dismissal of the
68 case, or an order of final disposition by the court.

69 (3) Except as provided in subsection (2), a child may not
70 be held in detention care for more than 15 days following the
71 entry of an order of adjudication.

72 (4) (a) The time limits in subsections (2) and (3) do not
73 include periods of delay resulting from a continuance granted by
74 the court for cause on motion of the child or his or her counsel
75 or of the state. Upon the issuance of an order granting a
76 continuance for cause on a motion by either the child, the
77 child's counsel, or the state, the court shall conduct a hearing
78 at the end of each 72-hour period, excluding Saturdays, Sundays,
79 and legal holidays, to determine the need for continued
80 detention of the child and the need for further continuance of
81 proceedings for the child or the state.

82 (b) The period for nonsecure detention care under this
83 section is tolled on the date that the department or a law
84 enforcement officer alleges that the child has violated a
85 condition of the child's nonsecure detention care until the
86 court enters a ruling on the violation. Notwithstanding the
87 tolling of nonsecure detention care, the court retains

24-01114-18

20181298__

88 jurisdiction over the child for a violation of a condition of
89 nonsecure detention care during the tolling period. If the court
90 finds that a child has violated his or her nonsecure detention
91 care, the number of days that the child served in any type of
92 detention care before commission of the violation shall be
93 excluded from the time limits under subsections (2) and (3).

94 Section 2. Present subsections (7) through (10) of section
95 985.433, Florida Statutes, are redesignated as subsections (8)
96 through (11), respectively, a new subsection (7) is added to
97 that section, and paragraph (c) of present subsection (7) is
98 amended, to read:

99 985.433 Disposition hearings in delinquency cases.—When a
100 child has been found to have committed a delinquent act, the
101 following procedures shall be applicable to the disposition of
102 the case:

103 (7) If the court determines that adjudication and
104 commitment to the department are suitable, the court must
105 receive and consider a predisposition report, including the
106 department's recommendation, before committing the child. The
107 predisposition report is an indispensable prerequisite to
108 commitment which cannot be waived by any party or by agreement
109 of the parties.

110 (8)~~(7)~~ If the court determines that the child should be
111 adjudicated as having committed a delinquent act and should be
112 committed to the department, such determination shall be in
113 writing or on the record of the hearing. The determination shall
114 include a specific finding of the reasons for the decision to
115 adjudicate and to commit the child to the department, including
116 any determination that the child was a member of a criminal

24-01114-18

20181298__

117 gang.

118 (c) The court may also require that the child be placed in
119 a probation program following the child's discharge from
120 commitment. Community-based sanctions under subsection (9) ~~(8)~~
121 may be imposed by the court at the disposition hearing or at any
122 time before ~~prior to~~ the child's release from commitment.

123 Section 3. Subsections (3) and (7) of section 985.672,
124 Florida Statutes, are amended to read:

125 985.672 Direct-support organization; definition; use of
126 property; board of directors; audit.—

127 (3) BOARD OF DIRECTORS.—The Secretary of Juvenile Justice
128 shall appoint a board of directors of the direct-support
129 organization according to the direct-support organization's
130 established bylaws. ~~Members of the organization must include~~
131 ~~representatives from businesses, representatives from each of~~
132 ~~the juvenile justice service districts, and one representative~~
133 ~~appointed at large.~~

134 (7) REPEAL.—This section is repealed October 1, 2028 ~~2018~~,
135 unless reviewed and saved from repeal by the Legislature.

136 Section 4. For the purpose of incorporating the amendment
137 made by this act to section 985.26, Florida Statutes, in a
138 reference thereto, subsection (8) of section 790.22, Florida
139 Statutes, is reenacted to read:

140 790.22 Use of BB guns, air or gas-operated guns, or
141 electric weapons or devices by minor under 16; limitation;
142 possession of firearms by minor under 18 prohibited; penalties.—

143 (8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor
144 is charged with an offense that involves the use or possession
145 of a firearm, including a violation of subsection (3), or is

24-01114-18

20181298__

146 charged for any offense during the commission of which the minor
147 possessed a firearm, the minor shall be detained in secure
148 detention, unless the state attorney authorizes the release of
149 the minor, and shall be given a hearing within 24 hours after
150 being taken into custody. At the hearing, the court may order
151 that the minor continue to be held in secure detention in
152 accordance with the applicable time periods specified in s.
153 985.26(1)-(5), if the court finds that the minor meets the
154 criteria specified in s. 985.255, or if the court finds by clear
155 and convincing evidence that the minor is a clear and present
156 danger to himself or herself or the community. The Department of
157 Juvenile Justice shall prepare a form for all minors charged
158 under this subsection which states the period of detention and
159 the relevant demographic information, including, but not limited
160 to, the gender, age, and race of the minor; whether or not the
161 minor was represented by private counsel or a public defender;
162 the current offense; and the minor's complete prior record,
163 including any pending cases. The form shall be provided to the
164 judge for determining whether the minor should be continued in
165 secure detention under this subsection. An order placing a minor
166 in secure detention because the minor is a clear and present
167 danger to himself or herself or the community must be in
168 writing, must specify the need for detention and the benefits
169 derived by the minor or the community by placing the minor in
170 secure detention, and must include a copy of the form provided
171 by the department.

172 Section 5. For the purpose of incorporating the amendment
173 made by this act to section 985.26, Florida Statutes, in a
174 reference thereto, subsection (2) of section 985.115, Florida

24-01114-18

20181298__

175 Statutes, is reenacted to read:

176 985.115 Release or delivery from custody.—

177 (2) Unless otherwise ordered by the court under s. 985.255
178 or s. 985.26, and unless there is a need to hold the child, a
179 person taking a child into custody shall attempt to release the
180 child as follows:

181 (a) To the child's parent, guardian, or legal custodian or,
182 if the child's parent, guardian, or legal custodian is
183 unavailable, unwilling, or unable to provide supervision for the
184 child, to any responsible adult. Prior to releasing the child to
185 a responsible adult, other than the parent, guardian, or legal
186 custodian, the person taking the child into custody may conduct
187 a criminal history background check of the person to whom the
188 child is to be released. If the person has a prior felony
189 conviction, or a conviction for child abuse, drug trafficking,
190 or prostitution, that person is not a responsible adult for the
191 purposes of this section. The person to whom the child is
192 released shall agree to inform the department or the person
193 releasing the child of the child's subsequent change of address
194 and to produce the child in court at such time as the court may
195 direct, and the child shall join in the agreement.

196 (b) Contingent upon specific appropriation, to a shelter
197 approved by the department or to an authorized agent.

198 (c) If the child is believed to be suffering from a serious
199 physical condition which requires either prompt diagnosis or
200 prompt treatment, to a law enforcement officer who shall deliver
201 the child to a hospital for necessary evaluation and treatment.

202 (d) If the child is believed to be mentally ill as defined
203 in s. 394.463(1), to a law enforcement officer who shall take

24-01114-18

20181298__

204 the child to a designated public receiving facility as defined
205 in s. 394.455 for examination under s. 394.463.

206 (e) If the child appears to be intoxicated and has
207 threatened, attempted, or inflicted physical harm on himself or
208 herself or another, or is incapacitated by substance abuse, to a
209 law enforcement officer who shall deliver the child to a
210 hospital, addictions receiving facility, or treatment resource.

211 (f) If available, to a juvenile assessment center equipped
212 and staffed to assume custody of the child for the purpose of
213 assessing the needs of the child in custody. The center may then
214 release or deliver the child under this section with a copy of
215 the assessment.

216 Section 6. For the purpose of incorporating the amendment
217 made by this act to section 985.26, Florida Statutes, in a
218 reference thereto, subsection (2) of section 985.13, Florida
219 Statutes, is reenacted to read:

220 985.13 Probable cause affidavits.—

221 (2) A person taking a child into custody who determines,
222 under part V, that the child should be detained or released to a
223 shelter designated by the department, shall make a reasonable
224 effort to immediately notify the parent, guardian, or legal
225 custodian of the child and shall, without unreasonable delay,
226 deliver the child to the appropriate juvenile probation officer
227 or, if the court has so ordered under s. 985.255 or s. 985.26,
228 to a detention center or facility. Upon delivery of the child,
229 the person taking the child into custody shall make a written
230 report or probable cause affidavit to the appropriate juvenile
231 probation officer. Such written report or probable cause
232 affidavit must:

24-01114-18

20181298__

233 (a) Identify the child and, if known, the parents,
234 guardian, or legal custodian.

235 (b) Establish that the child was legally taken into
236 custody, with sufficient information to establish the
237 jurisdiction of the court and to make a prima facie showing that
238 the child has committed a violation of law.

239 Section 7. For the purpose of incorporating the amendment
240 made by this act to section 985.26, Florida Statutes, in
241 references thereto, subsection (2) and paragraphs (a) and (c) of
242 subsection (3) of section 985.255, Florida Statutes, are
243 reenacted to read:

244 985.255 Detention criteria; detention hearing.—

245 (2) A child who is charged with committing an offense that
246 is classified as an act of domestic violence as defined in s.
247 741.28 and whose risk assessment instrument indicates secure
248 detention is not appropriate may be held in secure detention if
249 the court makes specific written findings that:

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

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

253
254 The child may not be held in secure detention under this
255 subsection for more than 48 hours unless ordered by the court.
256 After 48 hours, the court shall hold a hearing if the state
257 attorney or victim requests that secure detention be continued.
258 The child may continue to be held in detention care if the court
259 makes a specific, written finding that detention care is
260 necessary to protect the victim from injury. However, the child
261 may not be held in detention care beyond the time limits set

24-01114-18

20181298__

262 forth in this section or s. 985.26.

263 (3)(a) The purpose of the detention hearing required under
264 subsection (1) is to determine the existence of probable cause
265 that the child has committed the delinquent act or violation of
266 law that he or she is charged with and the need for continued
267 detention. Unless a child is detained under paragraph (1)(d) or
268 paragraph (1)(e), the court shall use the results of the risk
269 assessment performed by the department and, based on the
270 criteria in subsection (1), shall determine the need for
271 continued detention. If the child is a prolific juvenile
272 offender who is detained under s. 985.26(2)(c), the court shall
273 use the results of the risk assessment performed by the
274 department and the criteria in subsection (1) or subsection (2)
275 only to determine whether the prolific juvenile offender should
276 be held in secure detention.

277 (c) Except as provided in s. 790.22(8) or s. 985.27, when a
278 child is placed into detention care, or into a respite home or
279 other placement pursuant to a court order following a hearing,
280 the court order must include specific instructions that direct
281 the release of the child from such placement no later than 5
282 p.m. on the last day of the detention period specified in s.
283 985.26 or s. 985.27, whichever is applicable, unless the
284 requirements of such applicable provision have been met or an
285 order of continuance has been granted under s. 985.26(4). If the
286 court order does not include a release date, the release date
287 shall be requested from the court on the same date that the
288 child is placed in detention care. If a subsequent hearing is
289 needed to provide additional information to the court for safety
290 planning, the initial order placing the child in detention care

24-01114-18

20181298__

291 shall reflect the next detention review hearing, which shall be
292 held within 3 calendar days after the child's initial detention
293 placement.

294 Section 8. For the purpose of incorporating the amendment
295 made by this act to section 985.26, Florida Statutes, in a
296 reference thereto, paragraph (a) of subsection (1) of section
297 985.35, Florida Statutes, is reenacted to read:

298 985.35 Adjudicatory hearings; withheld adjudications;
299 orders of adjudication.-

300 (1) (a) Except as provided in paragraph (b), the
301 adjudicatory hearing must be held as soon as practicable after
302 the petition alleging that a child has committed a delinquent
303 act or violation of law is filed and in accordance with the
304 Florida Rules of Juvenile Procedure; but reasonable delay for
305 the purpose of investigation, discovery, or procuring counsel or
306 witnesses shall be granted. If the child is being detained, the
307 time limitations in s. 985.26(2) and (3) apply.

308 Section 9. This act shall take effect July 1, 2018.