



448502

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
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The Committee on Criminal Justice (Montford) recommended the following:

**Senate Substitute for Amendment (569312)**

Delete lines 263 - 487

and insert:

985.28 Confinement in detention facilities.-

(1) DEFINITIONS.-As used in this section, the term:

(a) "Child" means a person who is in the custody of the department and who is under the age of 19 years.

(b) "Emergency confinement" means a type of confinement that involves the involuntary placement of a child in an



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11 isolated room to separate that child from other children in the  
12 facility and to remove him or her from a situation in which he  
13 or she presents an immediate and serious danger to the security  
14 or safety of himself or herself or others.

15 (c) "Medical confinement" means a type of confinement that  
16 involves the involuntary placement of a child in an isolated  
17 room to separate that child from other children in the facility  
18 to allow the child to recover from illness or to prevent the  
19 spread of a communicable illness.

20 (d) "Mental health clinician" means a licensed  
21 psychiatrist, psychologist, social worker, mental health  
22 counselor, nurse practitioner, or physician assistant.

23 (e) "Solitary confinement" means the involuntary placement  
24 of a child in an isolated room to separate that child from other  
25 children in the facility for any period of time.

26 (2) PROHIBITION ON THE USE OF SOLITARY CONFINEMENT.—A child  
27 may not be placed in solitary confinement, except as provided in  
28 this section.

29 (3) PROTECTING A CHILD IN EMERGENCY CONFINEMENT.—

30 (a) A child may be placed in emergency confinement if all  
31 of the following conditions are met:

32 1. A nonphysical intervention with the child would not be  
33 effective in preventing harm or danger to the child or others.

34 2. There is imminent risk of the child physically harming  
35 himself or herself, staff, or others or the child is engaged in  
36 major property destruction that is likely to compromise the  
37 security of the program or jeopardize the safety of the child or  
38 others.

39 3. All less-restrictive means have been exhausted.



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40           (b) Facility staff shall document the placement of a child  
41 in emergency confinement. The documentation must include  
42 justification for the placement of a child in emergency  
43 confinement, in addition to a description of the less-  
44 restrictive options that the facility staff exercised before the  
45 child was so placed.

46           (c) A mental health clinician shall evaluate a child who is  
47 placed in emergency confinement within 1 hour after such  
48 placement to ensure that the confinement is not detrimental to  
49 the mental or physical health of the child. Following the  
50 initial evaluation, a mental health clinician shall conduct a  
51 face-to-face evaluation of the child every 2 hours thereafter to  
52 determine whether the child should remain in emergency  
53 confinement. The mental health clinician shall document each  
54 evaluation and provide justification for continued placement in  
55 emergency confinement.

56           (d) A child may not be placed in emergency confinement for  
57 more than 24 hours unless an extension is sought and obtained by  
58 a mental health clinician.

59           1. If a mental health clinician determines that release of  
60 the child would imminently threaten the safety of the child or  
61 others, the mental health clinician may grant a one-time  
62 extension of 24 hours for continued placement in emergency  
63 confinement.

64           2. If, at the conclusion of the 48-hour window, a mental  
65 health clinician determines that it is not safe for the child to  
66 be released from emergency confinement, the facility staff must  
67 prepare to transfer the child to a facility that is able to  
68 provide specialized treatment to address the child's needs.



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69       (e) A child who is placed in emergency confinement must be  
70 provided access to the same meals and drinking water, clothing,  
71 medical treatment, contact with parents and legal guardians, and  
72 legal assistance as provided to children in the facility.

73       (f) The use of emergency confinement is strictly prohibited  
74 for the purposes of punishment or discipline.

75       (4) PROTECTING A CHILD IN MEDICAL CONFINEMENT.-

76       (a) A child may be placed in medical confinement if all of  
77 the following conditions are met:

78       1. Isolation from staff and other children in the facility  
79 is required to allow the child to rest and recover from illness  
80 or to prevent the spread of a communicable illness.

81       2. A medical professional deems such placement necessary.

82       3. The use of other less-restrictive means would not be  
83 sufficient to allow the child to recover from illness or to  
84 prevent the spread of a communicable illness.

85       (b) A child may be placed in medical confinement for a  
86 period of time not to exceed the time that is necessary for the  
87 child to recover from his or her illness or to prevent the  
88 spread of a communicable illness to other children or staff in  
89 the facility.

90       (c) Facility staff shall document the placement of a child  
91 in medical confinement. The documentation must include a medical  
92 professional's justification for the placement.

93       (d) A medical professional must conduct a face-to-face  
94 evaluation of a child who is held in medical confinement at  
95 least once every 12 hours to determine whether the child should  
96 remain in medical confinement. The medical professional shall  
97 document each evaluation and provide justification for continued



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98 placement in medical confinement.

99 (e) The use of medical confinement is strictly prohibited  
100 for the purposes of punishment or discipline.

101 (5) IMPLEMENTATION.—

102 (a) The department and the board of county commissioners of  
103 each county that administers a detention facility shall review  
104 their policies and procedures relating to disciplinary treatment  
105 to determine whether their policies and procedures comply with  
106 this section.

107 (b) The department and the board of county commissioners of  
108 each county that administers a detention facility shall certify  
109 compliance with this section in a report that the department and  
110 the board shall submit to the Governor, the President of the  
111 Senate, and the Speaker of the House of Representatives by  
112 January 1, 2020.

113 (c) This section does not supersede any law providing  
114 greater or additional protections to a child in this state.

115 Section 4. Section 985.4415, Florida Statutes, is created  
116 to read:

117 985.4415 Confinement in residential facilities.—

118 (1) DEFINITIONS.—As used in this section, the term:

119 (a) "Child" means a person within the custody of the  
120 department who is under the age of 19 years.

121 (b) "Emergency confinement" means a type of confinement  
122 that involves the involuntary placement of a child in an  
123 isolated room to separate that child from other children in the  
124 facility and to remove him or her from a situation in which he  
125 or she presents an immediate and serious danger to the security  
126 or safety of himself or herself or others.



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127       (c) "Medical confinement" means a type of confinement that  
128 involves the involuntary placement of a child in an isolated  
129 room to separate that child from the other children in the  
130 facility and to allow him or her to recover from illness or to  
131 prevent the spread of a communicable illness.

132       (d) "Mental health clinician" means a licensed  
133 psychiatrist, psychologist, social worker, mental health  
134 counselor, nurse practitioner, or physician assistant.

135       (e) "Solitary confinement" means the involuntary placement  
136 of a child in an isolated room to separate that child from the  
137 other children in the facility for any period of time.

138       (2) PROHIBITION ON THE USE OF SOLITARY CONFINEMENT.—A child  
139 may not be placed in solitary confinement, except as provided in  
140 this section.

141       (3) PROTECTING A CHILD IN EMERGENCY CONFINEMENT.—

142       (a) A child may be placed in emergency confinement if all  
143 of the following conditions are met:

144       1. A nonphysical intervention with the child would not be  
145 effective in preventing harm or danger to the child or others.

146       2. There is imminent risk of the child physically harming  
147 himself or herself, staff, or others or the child is engaged in  
148 major property destruction that is likely to compromise the  
149 security of the program or jeopardize the safety of the child or  
150 others.

151       3. All less-restrictive means have been exhausted.

152       (b) Facility staff shall document the placement of a child  
153 in emergency confinement. The documentation must include  
154 justification for the placement of a child in emergency  
155 confinement, in addition to a description of the other less-



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156 restrictive options that the facility staff exercised before the  
157 child was so placed.

158 (c) A mental health clinician shall evaluate a child who is  
159 placed in emergency confinement within 1 hour after such  
160 placement to ensure that the confinement is not detrimental to  
161 the mental or physical health of the child. Following the  
162 initial evaluation, a mental health clinician shall conduct a  
163 face-to-face evaluation of the child every 2 hours thereafter to  
164 determine whether the child should remain in emergency  
165 confinement. The mental health clinician shall document each  
166 evaluation and provide justification for continued placement in  
167 emergency confinement.

168 (d) A child may not be placed in emergency confinement for  
169 more than 24 hours unless an extension is sought and obtained by  
170 a mental health clinician.

171 1. If a mental health clinician determines that release of  
172 the child would imminently threaten the safety of the child or  
173 others, the mental health clinician may grant a one-time  
174 extension of 24 hours for continued placement in emergency  
175 confinement.

176 2. If at the conclusion of the 48-hour window a mental  
177 health clinician determines that it is not safe for the child to  
178 be released from emergency confinement, the facility staff must  
179 prepare to transfer the child to a facility that is able to  
180 provide specialized treatment to address the child's needs.

181 (e) A child who is placed in emergency confinement must be  
182 provided access to the same meals and drinking water, clothing,  
183 medical treatment, contact with parents and legal guardians, and  
184 legal assistance as provided to children in the facility.



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185 (f) The use of emergency confinement is strictly prohibited  
186 for the purposes of punishment or discipline.

187 (4) PROTECTING A CHILD IN MEDICAL CONFINEMENT.—

188 (a) A child may be placed in medical confinement if all of  
189 the following conditions are met:

190 1. Isolation from other children and staff in the facility  
191 is required to allow a child to rest and recover from illness or  
192 to prevent the spread of a communicable illness.

193 2. A medical professional deems such placement necessary.

194 3. The use of other less-restrictive means would not be  
195 sufficient to allow the child to recover from illness or to  
196 prevent the spread of a communicable illness.

197 (b) A child may be placed in medical confinement for a  
198 period of time not to exceed the time that is necessary for the  
199 child to recover from his or her illness or to prevent the  
200 spread of a communicable illness to other children or staff in  
201 the facility.

202 (c) Facility staff shall document the placement of a child  
203 in medical confinement. The documentation must include a medical  
204 professional's justification for the placement.

205 (d) A medical professional must conduct a face-to-face  
206 evaluation of a child who is held in medical confinement at  
207 least once every 12 hours to determine whether the child should  
208 remain in medical confinement. The medical professional shall  
209 document each evaluation and provide justification for continued  
210 placement in medical confinement.

211 (e) The use of medical confinement is strictly prohibited  
212 for the purposes of punishment or discipline.

213 (5) IMPLEMENTATION.—





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214       (a) The department shall review its policies and procedures  
215 relating to disciplinary treatment in residential facilities to  
216 determine whether its policies and procedures comply with this  
217 section.

218       (b) The department shall certify compliance with this  
219 section in a report that the department shall submit to the  
220 Governor, the President of the Senate, and the Speaker of the  
221 House of Representatives by January 1, 2020.

222       (c) This section does not supersede any law providing  
223 greater or additional protections to a child in this state.

224       Section 5. Paragraph (s) is added to subsection (1) of  
225 section 944.09, Florida Statutes, to read:

226       944.09 Rules of the department; offenders, probationers,  
227 and parolees.—

228       (1) The department has authority to adopt rules pursuant to  
229 ss. 120.536(1) and 120.54 to implement its statutory authority.  
230 The rules must include rules relating to:

231       (s) Youth in confinement in compliance with s.