

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7029 PCB CRM 22-01 Time Limitations for Preadjudicatory Juvenile Detention Care

**SPONSOR(S):** Judiciary Committee, Criminal Justice & Public Safety Subcommittee, Brannan and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice & Public Safety Subcommittee	14 Y, 3 N	Petruzzelli	Hall
1) Justice Appropriations Subcommittee	9 Y, 5 N	Saag	Keith
2) Judiciary Committee	13 Y, 7 N, As CS	Petruzzelli	Kramer

### SUMMARY ANALYSIS

Detention care is the temporary care of a child in secure or supervised release detention pending a court adjudication or disposition of his or her juvenile delinquency case. A child held in secure detention care is under the physical restriction of a secure detention center. A child on supervised release detention care is in the nonsecure custody of a parent or guardian under the supervision of the Department of Juvenile Justice (DJJ) staff. A court may require a child to comply with a condition of electronic monitoring during a term of supervised release detention care.

Section 985.24, F.S., provides standards which govern the use of juvenile detention care and prohibits a child alleged to be dependent under ch. 39, F.S., from being placed into secure detention care under any circumstances. The prohibition does not make an exception for circumstances when a child alleged to be dependent is also alleged to have committed a delinquent act or violation of law.

Generally, s. 985.26, F.S., limits the time period a court may place a child in detention care to no more than 21 days unless an adjudicatory hearing for his or her case has commenced. When good cause is shown that additional time is needed for the prosecution or defense, the time period may be extended for up to an additional nine days if the child is charged with a capital felony, life felony, first degree felony, or second degree felony involving violence against any person. However, in many juvenile cases, the time period required to commence an adjudicatory hearing far exceeds 21 days or even 30 days. As such, under current law, a court may be required to release a child from detention care prior to his or her adjudicatory hearing, even under circumstances where the court finds such release inappropriate.

CS/HB 7029 amends ss. 985.24 and 985.26, F.S., to revise the time limitations and hearing requirements related to preadjudicatory juvenile detention care by:

- Authorizing a court to place a child alleged to be dependent in secure detention care if he or she is also alleged to have committed a delinquent act or violation of law.
- Authorizing a court to place a child on supervised release detention care for any time period until an adjudicatory hearing is completed, and requiring a court to conduct a hearing to determine the need for continued supervised release detention care if a child remains on supervised release for 60 days or more.
- Limiting a court from placing a child into secure detention care for more than 21 days unless he or she is charged with a specified offense and the court conducts a hearing at which it makes written findings that the totality of the circumstances warrant an extension of secure detention care, in which case, the court may extend secure detention in up to 21-day increments. If a child remains in secure detention for 60 days, the court must prioritize the disposition of his or her case.
- Revising the offenses a child must be alleged to have committed to be eligible for an extension of secure detention to also include any second degree felony and a third degree felony involving violence against a person.
- Authorizing, but not requiring, a law enforcement agency to supervise any court-ordered electronic monitoring of a child on supervised release detention care.

The bill may have a negative, yet indeterminate fiscal impact on state and local governments. The bill expands eligibility and extends time limitations for detention care, which may result in more children being placed in detention care for a longer time period, thereby increasing costs to DJJ. However, the bill also authorizes a local law enforcement agency to conduct an electronic monitoring program, or to partner with DJJ to do so, which may result in cost savings to DJJ.

The bill provides an effective date of July 1, 2022.

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h7029d.JDC

DATE: 2/23/2022

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Juvenile Detention Care

In Florida, the Department of Juvenile Justice (DJJ) administers the juvenile justice system. When a child is alleged to have committed a delinquent act, DJJ must review the sufficiency of the probable cause affidavit or report and complete an intake screening to make an initial determination whether detention care is necessary.<sup>1,2</sup> Detention care is the temporary care of a child in secure or supervised release detention care pending a court adjudication or disposition of his or her case.<sup>3</sup> A child held in secure detention is under the physical restriction of a secure detention center. A child on supervised release detention care is in the nonsecure custody of a parent or guardian under the supervision of DJJ staff. In some cases, a child placed on supervised release detention care may be ordered to participate in an electronic monitoring program.<sup>4</sup> Currently, DJJ is responsible for tracking and monitoring youth on supervised release, and making required contacts, such as night check-ins or face-to-face weekend contacts.<sup>5</sup>

Section 985.24, F.S., requires the use of detention care to be based primarily upon findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including illegal firearm possession;
- Presents history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed a specified offense of contempt of court; or
- Requests protection from imminent bodily harm.<sup>6</sup>

Additionally, s. 985.24, F.S., specifically prohibits a child from being placed into secure or supervised release detention care for any of the following reasons:

- To allow a parent to avoid his or her legal responsibility;
- To permit more convenient administrative access to the child;
- To facilitate further investigation or interrogation;
- Due to the lack of more appropriate facilities; or
- *The child is alleged to be dependent under ch. 39, F.S.*<sup>7</sup>

##### *Detention Risk Assessment Instrument*

DJJ utilizes the Detention Risk Assessment Instrument (DRAI) to make the initial determination of the need for detention. The tool was developed after considering the latest statistical analysis techniques

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<sup>1</sup> In 2021, the legislature passed “the Kaia Rolle Act”, which prohibits a child under the age of 7 from being arrested, charged, or adjudicated delinquent unless the violation of law is a forcible felony. S. 985.031, F.S.

<sup>2</sup> In counties that do not have an assessment center, the law enforcement officer calls a DJJ “on-call screener” to assess the juvenile’s risk and determine if detention is necessary. Office of the State Court’s Administrator, *Florida’s Juvenile Delinquency Benchbook* (June 2021), <https://www.flcourts.org/content/download/752754/file/Delinquency%20Benchbook%20-%20Final%20June%202021.pdf> (last visited Feb. 21, 2022).

<sup>3</sup> S. 985.03(18), F.S.

<sup>4</sup> S. 985.03(18)(b), F.S. In FY 19-20, DJJ served 3,565 youth through supervised release with electronic monitoring. OPPAGA, *Department of Juvenile Justice: Detention*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1007> (last visited Feb. 21, 2022).

<sup>5</sup> Florida Department of Juvenile Justice, *Monitoring and Quality Improvement Standards for Supervised Release Tracking Services FY 2021-2022* (June 2021), <https://www.djj.state.fl.us/content/download/54334/file/srt-standards-fy2122-final-06-11-21.pdf> (last visited Feb. 21, 2022).

<sup>6</sup> S. 985.024(1), F.S.

<sup>7</sup> “A child alleged to be dependent under chapter 39 may not, under any circumstances, be placed into secure detention care.” S. 985.24(3), F.S.

and risk-prediction methods in Florida's juvenile criminal justice setting<sup>8</sup> and is designed to determine the likelihood that a child will fail to appear in court or commit a new offense within a short window of time.<sup>9</sup> The DRAI uses a point system, based on factors such as:

- The current alleged offense;
- Prior referrals to DJJ, including whether the child has another case pending;
- Prior delinquency history, including whether the child has previously failed to appear for court hearings or escaped from supervision; and
- The child's age.

A child taken into custody and placed in detention care must be given a hearing within 24 hours to determine the existence of probable cause that the child has committed the delinquent act or violation of law for which he or she is charged and the need for continued detention. The court determines the need for continued detention based on the results of the DRAI and may order a continued detention status if the DRAI indicates secure or supervised release detention.<sup>10</sup>

### *Length of Detention*

Section 985.26, F.S., controls the time period for which a court can order a child to be placed in detention care. Generally, a child may not be held in detention care for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.<sup>11</sup> However, when good cause is shown that the nature of the charge requires additional time for prosecution or defense of the case, the court may extend the length of detention for an additional nine days if the child is charged with an offense that, if committed by an adult, would be a:

- Capital felony;
- Life felony;
- First-degree felony; or
- Second-degree felony involving violence against any person.<sup>12</sup>

Additionally, if the child is a prolific juvenile offender (PJO), the general time limitations for detention care do not apply and the court is required to place him or her on supervised release detention care with electronic monitoring or in secure detention care under a special detention order until disposition of the case.<sup>13</sup> A child may be classified as a PJO if he or she:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or has had adjudication withheld for a felony offense, or delinquent act that would be a felony if committed by an adult, that occurred before the current charge; and
- Has five or more of the following (three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult):
  - An arrest without a final disposition;
  - An adjudication; or
  - An adjudication withheld.<sup>14</sup>

The time limitations for detention care do not include periods of delay resulting from continuances granted by a court for cause on motion of the child or his or her counsel or of the state. If the court grants such a continuance, it must conduct a hearing at the end of each 72-hour period (excluding Saturdays, Sundays, and holidays) to determine the need for continued detention of the child and the need for any further continuance of the proceedings for the child or the state.<sup>15</sup>

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<sup>8</sup> Florida Department of Juvenile Justice, *Detention Risk Assessment Instrument* (July 1, 2019), <https://www.djj.state.fl.us/research/latest-initiatives/detention-risk-assessment-instrument> (last visited Feb. 21, 2022).

<sup>9</sup> Florida Department of Juvenile Justice, *Detention Risk Assessment Instrument-Frequently Asked Questions*, <https://www.djj.state.fl.us/research/latest-initiatives/detention-risk-assessment-instrument/frequently-asked-questions> (last visited Feb. 21, 2022).

<sup>10</sup> Ss. 985.255(1) and (3)(a), F.S.

<sup>11</sup> S. 985.26(2)(a), F.S.

<sup>12</sup> S. 985.26(2)(b), F.S.

<sup>13</sup> S. 985.26(2)(c), F.S.

<sup>14</sup> S. 985.255(1)(f), F.S.

<sup>15</sup> S. 985.26(4)(a), F.S.

Finally, the period for supervised release detention care is tolled under s. 985.26(4)(b), F.S., on the date that DJJ or a law enforcement officer alleges a child has violated a condition of his or her supervised release detention care, until such time that the court enters a ruling on the violation. The court retains jurisdiction over the child during the tolling period. If the court finds that the child violated his or her supervised release detention care, the number of days the child served in any type of detention care before the commission of the violation is excluded from the time limitations for detention care.<sup>16</sup>

Although s. 985.26, F.S., generally limits the time period a child can be placed on detention care to 21 days, in many cases, the time period required to commence an adjudicatory hearing far exceeds the 21-day period.<sup>17</sup> As such, under current law, a court may be required to release a child from detention care prior to the adjudicatory hearing in his or her delinquency case, even under circumstances where the court would otherwise find such release inappropriate.

## Effect of Proposed Changes

CS/HB 7029 amends ss. 985.24 and 985.26, F.S., to revise the time limitations and court procedures related to preadjudicatory juvenile detention care. Specifically, the bill amends s. 985.24, F.S., to authorize a court to order a child placed on supervised release detention care to comply with any available condition established by DJJ or ordered by the court, including electronic monitoring, when the court finds such condition necessary to preserve public safety or to ensure the child's safety or appearance in court. Additionally, the bill removes the prohibition against placing a child alleged to be dependent under ch. 39, F.S., into secure detention care in circumstances when he or she is also alleged to have committed a delinquent act or violation of law.

The bill amends s. 985.26, F.S., to create time limitations for detention care which differ depending on whether a child is placed on supervised release detention care, which may include electronic monitoring, or in secure detention care. Under the bill, a court may order a child to be placed on supervised release detention care for any period of time until an adjudicatory hearing is completed. However, if a child remains on supervised release detention care for 60 days, the bill requires the court to conduct a hearing within 15 days to determine the need for continued supervised release detention care. If the court finds good cause that the nature of the charge requires additional time for prosecution or defense of the case, or if the totality of the circumstances warrant an extension of supervised release detention care, the court may order the continued placement of the child on such detention care until his or her adjudicatory hearing is completed.

Additionally, the bill makes the 21-day time limitation under current law applicable to only secure detention care. As such, a court continues to be limited to placing a child in secure detention care for a maximum of 21 days unless he or she is charged with an offense for which an extension of secure detention care is authorized.

The bill authorizes a court, upon making written findings that good cause has been shown that additional time is required to prosecute or defend the case or that the totality of the circumstances warrant an extension, to extend the time period for which a child may be held in secure detention care for up to 21 days, rather than the current 9-day extension period, if the child is charged with a specified offense. The bill expands the types of offenses a child may be charged with to make him or her eligible for an extended period of secure detention to include:

- Any second degree felony; and

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<sup>16</sup> S. 985.26(4)(b), F.S.

<sup>17</sup> According to a 2021 DJJ report, the average length of stay in secure detention care is 17 days. Florida Department of Juvenile Justice, *Detention Risk Assessment Instrument (DRAOD) Supervised Release (SR) Outcomes Report January-June 2021 Analysis* (Jun. 2021), <https://www.djj.state.fl.us/content/download/53157/file/Statewide-DRAI-SR-Report---Jan---Jun-2021.pdf> (last visited Feb. 21, 2022). Under s. 985.039, F.S., a court may not order a parent of a child placed in secure detention care to pay more than \$5 per day for costs of care. Parents are required to supply information that allows the court to determine the parent's ability to pay, and upon a finding of indigency and significant financial hardship, the court shall waive or reduce the fee.

- A *third degree felony* involving violence against any person.

The bill authorizes a court to order additional extensions of secure detention, in up to 21-day increments, but only after conducting a hearing prior to the expiration of the child's current secure detention period and making written findings that there is a need for the child's continued secure detention. If a court extends the period of secure detention, it must ensure that an adjudicatory hearing in the child's case commences as soon as is reasonably possible and must prioritize the disposition of any child's case who has been held in secure detention for 60 days or more.

The bill repeals language authorizing the tolling of time limitations for supervised release detention care upon an allegation of a violation of supervised release and the exclusion of time periods of supervised release from the time limitation of detention care. Because the bill authorizes a court to place a child on supervised release detention care for any time period and grants the court authority to extend secure detention care in 21-day increments, such provisions are no longer necessary.

The bill specifies that a court may transition a child between secure detention care and supervised release detention care when the court finds such placement necessary to preserve public safety or the child's safety, appearance in court, or compliance with a court order. If a court orders a child to transition between secure detention care and supervised release detention care, the bill requires each period of secure detention or supervised release detention to count towards the applicable time limitations established for each type of detention care.

Finally, the bill authorizes any electronic monitoring ordered by a court as a condition of supervised release detention care to be supervised by DJJ, a law enforcement agency, or DJJ and a law enforcement agency working in partnership. Under the bill, a law enforcement agency may conduct its own electronic monitoring program, or partner with DJJ to respond to alerts or make required contacts with a child on supervised release detention care without intervention from DJJ.

The bill provides an effective date of July 1, 2022.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 985.24, F.S., relating to use of detention; prohibitions.

**Section 2:** Amends s. 985.26, F.S., relating to length of detention.

**Section 3:** Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have an indeterminate fiscal impact on DJJ expenditures. The bill expands eligibility and extends time limitations for detention care, which may result in more children being placed in detention care for a longer time period. These changes may result in an indeterminate increase to DJJ's operational costs. However, as of Jan. 20, 2022, DJJ reported that residential bed utilization was at 65% of overall capacity.<sup>18</sup> Additionally, juvenile arrests have decreased 51% over the last five years.<sup>19</sup> Any impact from expanded eligibility or extended time limitations for detention care can likely be absorbed within DJJ's existing resources.

The bill also authorizes a local law enforcement agency to conduct its own electronic monitoring

<sup>18</sup> Email from Tyler Jefferson, Deputy Legislative Affairs Director, Department of Juvenile Justice, DJJ Residential Resource Utilization Report (Jan. 24, 2022).

<sup>19</sup> Florida Department of Juvenile Justice, *Delinquency Profile 2021* (August 2021), <https://www.djj.state.fl.us/research/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last visited Jan. 31, 2022).

program, or to partner with DJJ to respond to alerts and conduct required contacts with a child on supervised release detention care. To the extent the bill prompts local law enforcement agencies to operate their own electronic monitoring programs, state expenditures may decrease.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have a negative, yet indeterminate fiscal impact on local law enforcement agencies to the extent that they opt to conduct an electronic monitoring program as authorized under the bill. However, the bill does not require local law enforcement agencies to participate in an electronic monitoring program. Additionally, the bill may have an indeterminate fiscal impact on counties that contribute to the costs of preadjudicatory detention care as the bill authorizes more children to be placed in detention care for a longer time period. However, the number of children this may impact is unknown.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

Six local entities, including five sheriff's offices and one police department, currently provide electronic monitoring services. The determination of whether monitoring should be provided by local or state entities is currently made by the court on a case-by-case basis. It is unknown how many law enforcement agencies will provide or cease to provide electronic monitoring as a result of the bill.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 23, 2022, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute differed from the original bill as it:

- Authorized a court to place a child alleged to be dependent under ch. 39, F.S., into secure detention care if he or she is also alleged to have committed a delinquent act or violation of law.

- Revised the length of time a child can be on supervised release before triggering a mandatory court hearing to determine the need for continued supervised release from 75 days to 60 days.
- Removed the exclusion of weekends and holidays from the time periods triggering a mandatory court hearing to determine the need for continued detention care.
- Authorized a court to place a child on supervised release until the child's adjudicatory hearing is completed, rather than commenced.
- Required a court to make the findings required to extend a period of secure detention in writing, rather than on the record.
- Made other stylistic, technical, and conforming changes.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.