

CHAPTER 2017-164

Committee Substitute for Committee Substitute for House Bill No. 7059

An act relating to juvenile justice; amending s. 382.0255, F.S.; requiring the Department of Health to waive fees for birth certificates issued to certain juvenile offenders; amending s. 985.25, F.S.; revising terminology; providing that a child meeting specified criteria shall be placed in secure detention care until the child's detention hearing; amending s. 985.255, F.S.; revising terminology; providing an additional circumstance under which the court may order continued detention; providing criteria for a child to be a prolific juvenile offender; defining the term "arrest event"; specifying certain information and criteria that may be considered by a court only when determining whether a prolific juvenile offender should be held in secure detention; conforming provisions to changes made by the act; amending s. 985.26, F.S.; revising terminology; requiring the court to place a prolific juvenile offender in certain detention care under a special detention order until disposition; specifying time limitations for secure detention for a prolific juvenile offender; defining the term "disposition"; providing for the tolling of nonsecure detention care for an alleged violation of such detention care; providing for the retention of jurisdiction by the court over a child during the tolling period; revising the calculation of detention care days served if a child violates nonsecure detention care; amending s. 985.265, F.S.; revising terminology; amending s. 985.27, F.S.; requiring secure detention for all children awaiting placement in a residential commitment program until the placement or commitment is accomplished; deleting provisions specifying the maximum number of days a child may be placed in secure detention under certain circumstances; amending s. 985.35, F.S.; requiring the adjudicatory hearing for a child who is a prolific juvenile offender to be held within a specified period unless such child requests a delay; revising the circumstances under which an adjudication of delinquency for a felony disqualifies a person from possessing a firearm; amending s. 985.514, F.S.; revising terminology; reenacting s. 790.22(8), F.S., relating to secure detention for minors charged with an offense involving BB guns, air or gas-operated guns, or electric weapons or devices, to incorporate the amendments made by the act to ss. 985.25, 985.255, and 985.26, F.S., in references thereto; reenacting s. 985.115(2), F.S., relating to release or delivery from custody, to incorporate the amendments made by the act to ss. 985.255 and 985.26, F.S., in references thereto; reenacting s. 985.13(2), F.S., relating to probable cause affidavits, to incorporate the amendments made by the act to ss. 985.255 and 985.26, F.S., in references thereto; reenacting s. 985.245(2)(b), F.S., relating to risk assessment instruments, to incorporate the amendment made by this act to s. 985.255, F.S., in a reference thereto; reenacting s. 985.255(2), F.S., relating to detention criteria and hearings, to incorporate the amendment made by this act to s. 985.26, F.S., in a reference thereto; reenacting s. 985.275(1), F.S., relating to detention

of an escapee or absconder, to incorporate the amendment made by this act to s. 985.255, F.S., in a reference thereto; reenacting s. 985.319(6), F.S., relating to process and service, to incorporate the amendment made by this act to s. 985.255, F.S., in a reference thereto; providing a declaration of important state interest; providing an appropriation; providing an effective date.

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

Section 1. Subsection (3) of section 382.0255, Florida Statutes, is amended to read:

382.0255 Fees.—

(3) Fees shall be established by rule. However, until rules are adopted, the fees assessed pursuant to this section shall be the minimum fees cited. The fees established by rule must be sufficient to meet the cost of providing the service. All fees shall be paid by the person requesting the record, are due and payable at the time services are requested, and are nonrefundable, except that, when a search is conducted and no vital record is found, any fees paid for additional certified copies shall be refunded. The department may waive all or part of the fees required under this section for any government entity. The department shall waive all fees required under this section for a certified copy of a birth certificate issued for purposes of an inmate acquiring a state identification card before release pursuant to s. 944.605(7) and for a juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice and receiving services under s. 985.461.

Section 2. Subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.—

(1) The department shall receive custody of a child who has been taken into custody from the law enforcement agency or court and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is appropriate.

(a) During the period of time from the taking of the child into custody to the date of the detention hearing, the initial decision as to the child's placement into ~~secure or nonsecure~~ detention care shall be made by the department under ss. 985.24 and 985.245(1).

(b) The department shall base the decision whether to place the child into ~~secure or nonsecure~~ detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under s. 985.245, ~~except that. However,~~ a child shall be placed in secure detention care until the child's detention hearing if the child meets the criteria specified in s. 985.255(1)(j), is charged with possessing or

~~discharging a firearm on school property in violation of s. 790.115, or shall be placed in secure detention care. A child who has been taken into custody on three or more separate occasions within a 60-day period shall be placed in secure detention care until the child's detention hearing.~~

(c) If the final score on the child's risk assessment instrument indicates detention care is appropriate, but the department otherwise determines the child should be released, the department shall contact the state attorney, who may authorize release.

(d) If the final score on the risk assessment instrument indicates detention is not appropriate, the child may be released by the department in accordance with ss. 985.115 and 985.13.

Under no circumstances shall the department or the state attorney or law enforcement officer authorize the detention of any child in a jail or other facility intended or used for the detention of adults, without an order of the court.

Section 3. Subsections (1) and (3) of section 985.255, Florida Statutes, are amended to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into ~~secure or nonsecure~~ detention care shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order continued detention if:

(a) The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

(b) The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing an offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(e) The child is charged with possession of or discharging a firearm on school property in violation of s. 790.115 or the illegal possession of a firearm.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of

chapter 893, or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
 2. Has a record of law violations prior to court hearings;
 3. Has already been detained or has been released and is awaiting final disposition of the case;
 4. Has a record of violent conduct resulting in physical injury to others;
- or
5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child shall be placed on nonsecure detention with electronic monitoring.

(i) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:

1. For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
2. At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(j) The child is a prolific juvenile offender. A child is a prolific juvenile offender if the child:

1. Is charged with a delinquent act that would be a felony if committed by an adult;
2. Has been adjudicated or had adjudication withheld for a felony offense, or delinquent act that would be a felony if committed by an adult, before the charge under subparagraph 1.; and

3. In addition to meeting the requirements of subparagraphs 1. and 2., has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:

a. An arrest event for which a disposition, as defined in s. 985.26, has not been entered;

b. An adjudication; or

c. An adjudication withheld.

As used in this subparagraph, the term “arrest event” means an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction.

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

(b) If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court shall state, in writing, clear and convincing reasons for such placement.

(c) Except as provided in s. 790.22(8) or ~~in~~ s. 985.27, when a child is placed into ~~secure or nonsecure~~ detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a release date, the release date shall be requested from the court on the same date that the child is placed in detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the child in detention care shall reflect the next detention review hearing, which shall be held within 3 calendar days after the child’s initial detention placement.

Section 4. Subsections (1) through (4) of section 985.26, Florida Statutes, are amended to read:

985.26 Length of detention.—

(1) A child may not be placed into or held in ~~secure or nonsecure~~ detention care for longer than 24 hours unless the court orders such detention care, and the order includes specific instructions that direct the release of the child from such detention care, in accordance with s. 985.255. The order shall be a final order, reviewable by appeal under s. 985.534 and the Florida Rules of Appellate Procedure. Appeals of such orders shall take precedence over other appeals and other pending matters.

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

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

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

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

2. Fifteen days after the entry of an order of adjudication.

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

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

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

(b) The period for nonsecure detention care under this section is tolled on the date that the department or a law enforcement officer alleges that the child has violated a condition of the child’s nonsecure detention care until the court enters a ruling on the violation. Notwithstanding the tolling of nonsecure detention care, the court retains jurisdiction over the child for a violation of a condition of nonsecure detention care during the tolling period. If the court finds that a child has violated his or her nonsecure detention care, the number of days that the child served in any type of detention care before commission of the violation shall be excluded from the time limits under subsections (2) and (3).

Section 5. Subsection (2) of section 985.265, Florida Statutes, is amended to read:

985.265 Detention transfer and release; education; adult jails.—

(2) If a child is on release status and not detained under this part, the child may be placed into ~~secure or nonsecure~~ detention care only pursuant to a court hearing in which the original risk assessment instrument and the newly discovered evidence or changed circumstances are introduced into evidence with a rescored risk assessment instrument.

Section 6. Section 985.27, Florida Statutes, is amended to read:

985.27 Postdisposition detention while awaiting residential commitment placement.—

~~(1) The court must place all children who are adjudicated and awaiting placement in a nonsecure, high-risk, or maximum-risk residential commitment program in secure detention care until the placement or commitment is accomplished. Children who are in nonsecure detention care may be placed on electronic monitoring.~~

~~(a) A child who is awaiting placement in a nonsecure residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. Any child held in secure detention during the 5 days must meet detention admission criteria under this part. The department may seek an order from the court authorizing continued detention for a specific period of time necessary for the appropriate residential placement of the child. However, such continued detention in secure detention care may not exceed 15 days after entry of the commitment order, excluding Saturdays, Sundays, and legal holidays, and except as otherwise provided in this section. A child who is placed in nonsecure detention care or nonsecure detention care with electronic monitoring, while awaiting placement in a nonsecure residential program, may be held in secure detention care for 5 days, if the child violates the conditions of the nonsecure detention care or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.~~

~~(b) If the child is committed to a high-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.~~

~~(c) If the child is committed to a maximum-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.~~

~~(2) Regardless of detention status, a child being transported by the department to a residential commitment facility of the department may be placed in secure detention overnight, not to exceed a 24-hour period, for the specific purpose of ensuring the safe delivery of the child to his or her residential commitment program, court, appointment, transfer, or release.~~

Section 7. Subsections (1) and (7) of section 985.35, Florida Statutes, are amended to read:

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

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

(b) If the child is a prolific juvenile offender under s. 985.255(1)(j), the adjudicatory hearing must be held within 45 days after the child is taken into custody unless a delay is requested by the child.

(7) Notwithstanding any other provision of law, An adjudication of delinquency for an offense classified as a felony shall disqualify a person from lawfully possessing a firearm until such person reaches 24 years of age, unless the person's criminal history record for that offense has been expunged pursuant to s. 943.0515(1)(b).

Section 8. Subsection (1) of section 985.514, Florida Statutes, is amended to read:

985.514 Responsibility for cost of care; fees.—

(1) When any child is placed into ~~secure or nonsecure~~ detention care or into other placement for the purpose of being supervised by the department pursuant to a court order following a detention hearing, the court shall order the child's parents to pay fees to the department as provided in s. 985.039.

Section 9. For the purpose of incorporating the amendments made by this act to sections 985.25, 985.255, and 985.26, Florida Statutes, in

references thereto, subsection (8) of section 790.22, Florida Statutes, is reenacted to read:

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

(8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor is charged with an offense that involves the use or possession of a firearm, including a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 985.26(1)-(5), if the court finds that the minor meets the criteria specified in s. 985.255, or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. The Department of Juvenile Justice shall prepare a form for all minors charged under this subsection which states the period of detention and the relevant demographic information, including, but not limited to, the gender, age, and race of the minor; whether or not the minor was represented by private counsel or a public defender; the current offense; and the minor's complete prior record, including any pending cases. The form shall be provided to the judge for determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or herself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department.

Section 10. For the purpose of incorporating the amendment made by this act to sections 985.255 and 985.26, Florida Statutes, in references thereto, subsection (2) of section 985.115, Florida Statutes, is reenacted to read:

985.115 Release or delivery from custody.—

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

(a) To the child's parent, guardian, or legal custodian or, if the child's parent, guardian, or legal custodian is unavailable, unwilling, or unable to provide supervision for the child, to any responsible adult. Prior to releasing the child to a responsible adult, other than the parent, guardian, or legal custodian, the person taking the child into custody may conduct a criminal history background check of the person to whom the child is to be released. If the person has a prior felony conviction, or a conviction for child abuse, drug

trafficking, or prostitution, that person is not a responsible adult for the purposes of this section. The person to whom the child is released shall agree to inform the department or the person releasing the child of the child's subsequent change of address and to produce the child in court at such time as the court may direct, and the child shall join in the agreement.

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

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

(d) If the child is believed to be mentally ill as defined in s. 394.463(1), to a law enforcement officer who shall take the child to a designated public receiving facility as defined in s. 394.455 for examination under s. 394.463.

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

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

Section 11. For the purpose of incorporating the amendment made by this act to sections 985.255 and 985.26, Florida Statutes, in references thereto, subsection (2) of section 985.13, Florida Statutes, is reenacted to read:

985.13 Probable cause affidavits.—

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

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

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

Section 12. For the purpose of incorporating the amendment made by this act to section 985.255, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 985.245, Florida Statutes, is reenacted to read:

985.245 Risk assessment instrument.—

(2)

(b) The risk assessment instrument shall take into consideration, but need not be limited to, prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration appropriate aggravating and mitigating circumstances, and shall be designed to target a narrower population of children than s. 985.255. The risk assessment instrument shall also include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted, and, if detention care is warranted, whether the child should be placed into secure or nonsecure detention care.

Section 13. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, subsection (2) of section 985.255, Florida Statutes, is reenacted to read:

985.255 Detention criteria; detention hearing.—

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

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

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

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in this section or s. 985.26.

Section 14. For the purpose of incorporating the amendment made by this act to section 985.255, Florida Statutes, in a reference thereto, subsection (1) of section 985.275, Florida Statutes, is reenacted to read:

985.275 Detention of escapee or absconder on authority of the department.—

(1) If an authorized agent of the department has reasonable grounds to believe that any delinquent child committed to the department has escaped from a residential commitment facility or from being lawfully transported thereto or therefrom, or has absconded from a nonresidential commitment facility, the agent shall notify law enforcement and, if the offense would require notification under chapter 960, notify the victim. The agent shall make every reasonable effort as permitted within existing resources provided to the department to locate the delinquent child, and the child may be returned to the facility or, if it is closer, to a detention center for return to the facility. However, a child may not be held in detention longer than 24 hours, excluding Saturdays, Sundays, and legal holidays, unless a special order so directing is made by the judge after a detention hearing resulting in a finding that detention is required based on the criteria in s. 985.255. The order shall state the reasons for such finding. The reasons shall be reviewable by appeal or in habeas corpus proceedings in the district court of appeal.

Section 15. For the purpose of incorporating the amendment made by this act to section 985.255, Florida Statutes, in a reference thereto, subsection (6) of section 985.319, Florida Statutes, is reenacted to read:

985.319 Process and service.—

(6) If the petition alleges that the child has committed a delinquent act or violation of law and the judge deems it advisable to do so, under the criteria of s. 985.255, the judge may, by endorsement upon the summons and after the entry of an order in which valid reasons are specified, order the child to be taken into custody immediately, and in such case the person serving the summons shall immediately take the child into custody.

Section 16. The Legislature determines and declares that this act fulfills an important state interest.

Section 17. For the 2017-2018 fiscal year, the sums of \$2,978,012 in recurring funds and \$2,978,012 in nonrecurring funds from the General Revenue Fund are appropriated to the Department of Juvenile Justice for the purpose of implementing this act.

Section 18. This act shall take effect October 1, 2017.

Approved by the Governor June 23, 2017.

Filed in Office Secretary of State June 23, 2017.