

By Senator Wise

5-1259-05

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A bill to be entitled

An act relating to juvenile detention; amending s. 985.03, F.S.; redefining the term "home detention" to mean detention that requires a parent, guardian, or custodian to supervise a child who is placed on home detention; deleting provisions making the Department of Juvenile Justice responsible for supervising a child who is placed on home detention; amending ss. 985.215 and 985.231, F.S.; providing that a child may be placed on home detention with or without electronic monitoring; amending s. 985.2311, F.S.; clarifying that the parent must pay the fees for the cost of care for a child placed on home detention; providing an effective date.

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

Section 1. Paragraph (c) of subsection (18) of section 985.03, Florida Statutes, is amended to read:

985.03 Definitions.--When used in this chapter, the term:

(18) "Detention care" means the temporary care of a child in secure, nonsecure, or home detention, pending a court adjudication or disposition or execution of a court order.

There are three types of detention care, as follows:

(c) "Home detention" means a temporary status when the child has been released to his or her parent, guardian, or custodian before a dispositional hearing or while the child is awaiting placement after a dispositional hearing. During the

1 time the child is on home detention status, the child shall  
2 live in the community under the supervision of the parent,  
3 guardian, or custodian. The parent, guardian, or custodian  
4 shall notify the court whenever the child violates any  
5 provision of the home detention order ~~custody of the child~~  
6 ~~while the child is released to the custody of the parent,~~  
7 ~~guardian, or custodian in a physically nonrestrictive~~  
8 ~~environment under the supervision of the Department of~~  
9 ~~Juvenile Justice staff pending adjudication, disposition, or~~  
10 ~~placement.~~

11 Section 2. Subsection (2) and paragraph (b) of  
12 subsection (10) of section 985.215, Florida Statutes, are  
13 amended to read:

14 985.215 Detention.--

15 (2) Subject to the provisions of subsection (1), a  
16 child taken into custody and placed into nonsecure or home  
17 detention care or detained in secure detention care before  
18 ~~prior to~~ a detention hearing may continue to be detained by  
19 the court if:

20 (a) The child is alleged to be an escapee or an  
21 absconder from a commitment program, a probation program, or  
22 conditional release supervision, or is alleged to have escaped  
23 while being lawfully transported to or from the ~~such~~ program  
24 or supervision.

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

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

31

1 (d) The child is charged with committing an offense of  
2 domestic violence as defined in s. 741.28 and is detained as  
3 provided in s. 985.213(2)(b)3.

4 (e) The child is charged with possession or  
5 discharging a firearm on school property in violation of s.  
6 790.115.

7 (f) The child is charged with a capital felony, a life  
8 felony, a felony of the first degree, a felony of the second  
9 degree that does not involve a violation of chapter 893, or a  
10 felony of the third degree that is also a crime of violence,  
11 including any ~~such~~ offense involving the use or possession of  
12 a firearm.

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

17 1. Has a record of failure to appear at court hearings  
18 after being properly notified in accordance with the Rules of  
19 Juvenile Procedure;

20 2. Has a record of law violations before ~~prior to~~  
21 court hearings;

22 3. Has already been detained or has been released and  
23 is awaiting final disposition of the case;

24 4. Has a record of violent conduct resulting in  
25 physical injury to others; or

26 5. Is found to have been in possession of a firearm.

27 (h) The child is alleged to have violated the  
28 conditions of the child's probation or conditional release  
29 supervision. However, a child detained under this paragraph  
30 may be held only in a consequence unit as provided in s.  
31 985.231(1)(a)1.c. If a consequence unit is not available, the

1 child shall be placed on home detention with or without  
2 electronic monitoring.

3 (i) The child is detained on a judicial order for  
4 failure to appear and has previously willfully failed to  
5 appear, after proper notice, for an adjudicatory hearing on  
6 the same case regardless of the results of the risk assessment  
7 instrument. A child may be held in secure detention for up to  
8 72 hours in advance of the next scheduled court hearing under  
9 ~~pursuant to~~ this paragraph. The child's failure to keep the  
10 clerk of court and defense counsel informed of a current and  
11 valid mailing address where the child will receive notice to  
12 appear at court proceedings does not provide an adequate  
13 ground for excusal of the child's nonappearance at the  
14 hearings.

15 (j) The child is detained on a judicial order for  
16 failure to appear and has previously willfully failed to  
17 appear, after proper notice, at two or more court hearings of  
18 any nature on the same case regardless of the results of the  
19 risk assessment instrument. A child may be held in secure  
20 detention for up to 72 hours in advance of the next scheduled  
21 court hearing under ~~pursuant to~~ this paragraph. The child's  
22 failure to keep the clerk of court and defense counsel  
23 informed of a current and valid mailing address where the  
24 child will receive notice to appear at court proceedings does  
25 not provide an adequate ground for excusal of the child's  
26 nonappearance at the hearings.

27  
28 A child who meets any of these criteria and who is ordered to  
29 be detained under ~~pursuant to~~ this subsection shall be given a  
30 hearing within 24 hours after being taken into custody. The  
31 purpose of the detention hearing is to determine the existence

1 of probable cause that the child has committed the delinquent  
2 act or violation of law with which he or she is charged and  
3 the need for continued detention. Unless a child is detained  
4 under paragraph (d) or paragraph (e), the court shall utilize  
5 the results of the risk assessment performed by the juvenile  
6 probation officer and, based on the criteria in this  
7 subsection, shall determine the need for continued detention.  
8 A child placed into secure, nonsecure, or home detention care  
9 may continue to be so detained by the court under ~~pursuant to~~  
10 this subsection. If the court orders a placement more  
11 restrictive than indicated by the results of the risk  
12 assessment instrument, the court shall state, in writing,  
13 clear and convincing reasons for the such placement. Except as  
14 provided in s. 790.22(8) or in subparagraph (10)(a)2.,  
15 paragraph (10)(b), paragraph (10)(c), or paragraph (10)(d),  
16 when a child is placed into secure or nonsecure detention  
17 care, or into a respite home or other placement under ~~pursuant~~  
18 ~~to~~ a court order following a hearing, the court order must  
19 include specific instructions that direct the release of the  
20 child from the such placement no later than 5 p.m. on the last  
21 day of the detention period specified in paragraph (5)(b) or  
22 paragraph (5)(c), or subparagraph (10)(a)1., whichever is  
23 applicable, unless the requirements of the such applicable  
24 provision have been met or an order of continuance has been  
25 granted under ~~pursuant to~~ paragraph (5)(f).

26 (10)

27 (b) A child who is placed in home detention care,  
28 nonsecure detention care, or home or nonsecure detention care  
29 with or without electronic monitoring, while awaiting  
30 placement in a low-risk or moderate-risk program, may be held  
31 in secure detention care for 5 days, if the child violates the

1 | conditions of the home detention care, the nonsecure detention  
2 | care, or the electronic monitoring agreement. For any  
3 | subsequent violation, the court may impose an additional 5  
4 | days in secure detention care.

5 |         Section 3. Paragraph (a) of subsection (1) of section  
6 | 985.231, Florida Statutes, is amended to read:

7 |             985.231 Powers of disposition in delinquency cases.--

8 |             (1)(a) The court that has jurisdiction of an  
9 | adjudicated delinquent child may, by an order stating the  
10 | facts upon which a determination of a sanction and  
11 | rehabilitative program was made at the disposition hearing:

12 |             1. Place the child in a probation program or a  
13 | postcommitment probation program under the supervision of an  
14 | authorized agent of the Department of Juvenile Justice or of  
15 | any other person or agency specifically authorized and  
16 | appointed by the court, whether in the child's own home, in  
17 | the home of a relative of the child, or in some other suitable  
18 | place under such reasonable conditions as the court may  
19 | direct. A probation program for an adjudicated delinquent  
20 | child must include a penalty component such as restitution in  
21 | money or in kind, community service, a curfew, revocation or  
22 | suspension of the driver's license of the child, or other  
23 | nonresidential punishment appropriate to the offense and must  
24 | also include a rehabilitative program component such as a  
25 | requirement of participation in substance abuse treatment or  
26 | in school or other educational program. If the child is  
27 | attending or is eligible to attend public school and the court  
28 | finds that the victim or a sibling of the victim in the case  
29 | is attending or may attend the same school as the child, the  
30 | court placement order shall include a finding under ~~pursuant~~  
31 | ~~to~~ the proceedings described in s. 985.23(1)(d). Upon the

1 recommendation of the department at the time of disposition,  
2 or subsequent to disposition pursuant to the filing of a  
3 petition alleging a violation of the child's conditions of  
4 postcommitment probation, the court may order the child to  
5 submit to random testing for the purpose of detecting and  
6 monitoring the use of alcohol or controlled substances.

7       a. A restrictiveness level classification scale for  
8 levels of supervision shall be provided by the department,  
9 taking into account the child's needs and risks relative to  
10 probation supervision requirements to reasonably ensure the  
11 public safety. Probation programs for children shall be  
12 supervised by the department or by any other person or agency  
13 specifically authorized by the court. These programs must  
14 include, but are not limited to, structured or restricted  
15 activities as described in this subparagraph, and shall be  
16 designed to encourage the child toward acceptable and  
17 functional social behavior. If supervision or a program of  
18 community service is ordered by the court, the duration of the  
19 ~~such~~ supervision or program must be consistent with any  
20 treatment and rehabilitation needs identified for the child  
21 and may not exceed the term for which sentence could be  
22 imposed if the child were committed for the offense, except  
23 that the duration of the ~~such~~ supervision or program for an  
24 offense that is a misdemeanor of the second degree, or is  
25 equivalent to a misdemeanor of the second degree, may be for a  
26 period not to exceed 6 months. When restitution is ordered by  
27 the court, the amount of restitution may not exceed an amount  
28 the child and the parent or guardian could reasonably be  
29 expected to pay or make. A child who participates in any work  
30 program under this part is considered an employee of the state  
31 for purposes of liability, unless otherwise provided by law.

1           b. The court may conduct judicial review hearings for  
2 a child placed on probation for the purpose of fostering  
3 accountability to the judge and compliance with other  
4 requirements, such as restitution and community service. The  
5 court may allow early termination of probation for a child who  
6 has substantially complied with the terms and conditions of  
7 probation.

8           c. If the conditions of the probation program or the  
9 postcommitment probation program are violated, the department  
10 or the state attorney may bring the child before the court on  
11 a petition alleging a violation of the program. Any child who  
12 violates the conditions of probation or postcommitment  
13 probation must be brought before the court if sanctions are  
14 sought. A child taken into custody under s. 985.207 for  
15 violating the conditions of probation or postcommitment  
16 probation shall be held in a consequence unit if such a unit  
17 is available. The child shall be afforded a hearing within 24  
18 hours after being taken into custody to determine the  
19 existence of probable cause that the child violated the  
20 conditions of probation or postcommitment probation. A  
21 consequence unit is a secure facility specifically designated  
22 by the department for children who are taken into custody  
23 under s. 985.207 for violating probation or postcommitment  
24 probation, or who have been found by the court to have  
25 violated the conditions of probation or postcommitment  
26 probation. If the violation involves a new charge of  
27 delinquency, the child may be detained under s. 985.215 in a  
28 facility other than a consequence unit. If the child is not  
29 eligible for detention for the new charge of delinquency, the  
30 child may be held in the consequence unit pending a hearing  
31 and is subject to the time limitations specified in s.



1 985.215. If the child denies violating the conditions of  
2 probation or postcommitment probation, the court shall appoint  
3 counsel to represent the child at the child's request. Upon  
4 the child's admission, or if the court finds after a hearing  
5 that the child has violated the conditions of probation or  
6 postcommitment probation, the court shall enter an order  
7 revoking, modifying, or continuing probation or postcommitment  
8 probation. In each ~~such~~ case, the court shall enter a new  
9 disposition order and, in addition to the sanctions set forth  
10 in this paragraph, may impose any sanction the court could  
11 have imposed at the original disposition hearing. If the child  
12 is found to have violated the conditions of probation or  
13 postcommitment probation, the court may:

14 (I) Place the child in a consequence unit in that  
15 judicial circuit, if available, for up to 5 days for a first  
16 violation, and up to 15 days for a second or subsequent  
17 violation.

18 (II) Place the child on home detention with or without  
19 electronic monitoring. However, this sanction may be used only  
20 if a residential consequence unit is not available.

21 (III) Modify or continue the child's probation program  
22 or postcommitment probation program.

23 (IV) Revoke probation or postcommitment probation and  
24 commit the child to the department.

25 d. Notwithstanding s. 743.07 and paragraph (d), and  
26 except as provided in s. 985.31, the term of any order placing  
27 a child in a probation program must be until the child's 19th  
28 birthday unless he or she is released by the court, on the  
29 motion of an interested party or on its own motion.

30 2. Commit the child to a licensed child-caring agency  
31 willing to receive the child, but the court may not commit the

1 child to a jail or to a facility used primarily as a detention  
2 center or facility or shelter.

3           3. Commit the child to the Department of Juvenile  
4 Justice at a residential commitment level defined in s.  
5 985.03. ~~The~~ Such commitment must be for the purpose of  
6 exercising active control over the child, including, but not  
7 limited to, custody, care, training, urine monitoring, and  
8 treatment of the child and release of the child into the  
9 community in a postcommitment nonresidential conditional  
10 release program. If the child is eligible to attend public  
11 school following residential commitment and the court finds  
12 that the victim or a sibling of the victim in the case is or  
13 may be attending the same school as the child, the commitment  
14 order shall include a finding under ~~pursuant to~~ the  
15 proceedings described in s. 985.23(1)(d). If the child is not  
16 successful in the conditional release program, the department  
17 may use the transfer procedure under s. 985.404.  
18 Notwithstanding s. 743.07 and paragraph (d), and except as  
19 provided in s. 985.31, the term of the commitment must be  
20 until the child is discharged by the department or until he or  
21 she reaches the age of 21.

22           4. Revoke or suspend the driver's license of the  
23 child.

24           5. Require the child and, if the court finds it  
25 appropriate, the child's parent or guardian together with the  
26 child, to render community service in a public service  
27 program.

28           6. As part of the probation program to be implemented  
29 by the Department of Juvenile Justice, or, in the case of a  
30 committed child, as part of the community-based sanctions  
31 ordered by the court at the disposition hearing or before the

1 child's release from commitment, order the child to make  
2 restitution in money, through a promissory note cosigned by  
3 the child's parent or guardian, or in kind for any damage or  
4 loss caused by the child's offense in a reasonable amount or  
5 manner to be determined by the court. The clerk of the circuit  
6 court shall be the receiving and dispensing agent. In such  
7 case, the court shall order the child or the child's parent or  
8 guardian to pay to the office of the clerk of the circuit  
9 court an amount not to exceed the actual cost incurred by the  
10 clerk as a result of receiving and dispensing restitution  
11 payments. The clerk shall notify the court if restitution is  
12 not made, and the court shall take any further action that is  
13 necessary against the child or the child's parent or guardian.  
14 A finding by the court, after a hearing, that the parent or  
15 guardian has made diligent and good faith efforts to prevent  
16 the child from engaging in delinquent acts absolves the parent  
17 or guardian of liability for restitution under this  
18 subparagraph.

19           7. Order the child and, if the court finds it  
20 appropriate, the child's parent or guardian together with the  
21 child, to participate in a community work project, either as  
22 an alternative to monetary restitution or as part of the  
23 rehabilitative or probation program.

24           8. Commit the child to the Department of Juvenile  
25 Justice for placement in a program or facility for serious or  
26 habitual juvenile offenders in accordance with s. 985.31. Any  
27 commitment of a child to a program or facility for serious or  
28 habitual juvenile offenders must be for an indeterminate  
29 period of time, but the time may not exceed the maximum term  
30 of imprisonment that an adult may serve for the same offense.  
31 The court may retain jurisdiction over ~~the~~ such child until

1 the child reaches the age of 21, specifically for the purpose  
2 of the child completing the program.

3           9. In addition to the sanctions imposed on the child,  
4 order the parent or guardian of the child to perform community  
5 service if the court finds that the parent or guardian did not  
6 make a diligent and good faith effort to prevent the child  
7 from engaging in delinquent acts. The court may also order the  
8 parent or guardian to make restitution in money or in kind for  
9 any damage or loss caused by the child's offense. The court  
10 shall determine a reasonable amount or manner of restitution,  
11 and payment shall be made to the clerk of the circuit court as  
12 provided in subparagraph 6.

13           10. Subject to specific appropriation, commit the  
14 juvenile sexual offender to the Department of Juvenile Justice  
15 for placement in a program or facility for juvenile sexual  
16 offenders in accordance with s. 985.308. Any commitment of a  
17 juvenile sexual offender to a program or facility for juvenile  
18 sexual offenders must be for an indeterminate period of time,  
19 but the time may not exceed the maximum term of imprisonment  
20 that an adult may serve for the same offense. The court may  
21 retain jurisdiction over a juvenile sexual offender until the  
22 juvenile sexual offender reaches the age of 21, specifically  
23 for the purpose of completing the program.

24           Section 4. Paragraph (a) of subsection (1) of section  
25 985.2311, Florida Statutes, is amended to read:

26           985.2311 Cost of supervision; cost of care.--

27           (1) Except as provided in subsection (3) or subsection  
28 (4):

29           (a) When any child is placed into postdisposition home  
30 detention, probation, or other supervision status with the  
31 Department of Juvenile Justice, the court shall order the

1 parent of the ~~such~~ child to pay to the department a fee for  
2 the cost of the supervision of such child in the amount of \$1  
3 per day for each day that the child is in supervision status.

4 Section 5. This act shall take effect October 1, 2005.

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SENATE SUMMARY

8 Redefines the term "home detention" to require a parent,  
9 guardian, or custodian to supervise a child on home  
10 detention. Deletes the responsibility of the Department  
11 of Juvenile Justice for the supervision of a child on  
12 home detention. Provides that a child may be placed on  
13 home detention with or without electronic monitoring.  
14 Clarifies that a parent must pay the cost-of-care fees  
15 for a child placed on home detention.

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