

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 7040

INTRODUCER: Rules Committee and Appropriations Committee

SUBJECT: Time Limitations for Preadjudicatory Juvenile Detention Care

DATE: February 24, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Stokes	Harkness		ACJ Discussed
Atchley	Sadberry		AP Submitted as Comm. Bill/Fav
1. Stokes	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7040 amends s. 985.24, F.S., providing that a child who is placed on supervised release detention care must comply with any available condition established by the Department of Juvenile Justice (DJJ) or ordered by the court, including electronic monitoring, if the court finds such condition necessary to preserve public safety or to ensure the child's safety or appearance in court.

The bill clarifies that a child who is alleged to be dependent under ch. 39, F.S., *but who is not alleged to have committed a delinquent act or violation of law*, may not be placed into secure detention.

The bill authorizes a court to order a child be placed on *supervised release detention* care for any time period until an adjudicatory hearing for the case has been completed. If a child has served 60 days on supervised release detention care, the court must conduct a hearing within 15 days after the 60th day, to determine if continued supervised release detention care is warranted.

The bill specifies that, except in specified circumstances, a child may not be held in *secure detention* for longer than 21 days unless an adjudicatory hearing has been completed. Under current law, a child generally may not be held in *secure* or *supervised release detention* care for longer than 21 days, except in specified circumstances.

Additionally, the bill provides that the court may transition a child between secure detention care and supervised release detention care, including electronic monitoring, if the court finds such placement is necessary. Each period of secure detention care or supervised release detention care counts toward the time limitations, whether served consecutively or nonconsecutively.

Currently, upon a showing of good cause that additional time for the prosecution or defense is needed, the court may extend the length of detention for an additional 9 days, for specified offenses. The bill authorizes a court to also extend the length of detention based upon the totality of the circumstances, including the preservation of public safety, warranting an extension. Additionally, the bill increases the length of such extension from 9 days to up to 21 days. The bill expands the list of specified offenses to include:

- Any second degree felony; and
- A third degree felony involving violence against any individual.

The court may continue to extend the period of secure detention in increments of up to 21 days by conducting a hearing before the expiration of the current period. At such hearing the court must make required written findings. If the court extends the time period of secure detention care, it must ensure that an adjudicatory hearing for the case commences as soon as is reasonably possible and prioritize the efficient disposition of those cases in which the child has served 60 or more days in secure detention care.

The bill removes language contained in s. 985.26(4), F.S., relating to time limitations of preadjudicatory detention care because this language conflicts with new provisions relating to time limitations in the bill.

Any electronic monitoring ordered by a court as a condition of supervised release detention care may be supervised by the DJJ, a law enforcement agency, or the department and a law enforcement agency working in partnership. However, the bill specifies that it does not require a law enforcement agency to supervise a child placed on electronic monitoring.

This bill may have an indeterminate bed impact on the DJJ. See section V. Fiscal Impact Statement.

This bill is effective July 1, 2022.

II. Present Situation:

Detention of Children in Florida

Intake and Assessment

Every child under the age of 18 charged with a crime in Florida is referred to the DJJ.¹ Intake and screening services for a child referred to the DJJ are performed at a Juvenile Assessment Center.² The purpose of the intake process is to assess the child's needs and risks and to

¹ A referral is similar to an arrest in the adult criminal justice system. See the DJJ, *Probation and Community Intervention, Overview*, available at <http://www.djj.state.fl.us/services/probation> (last visited February 24, 2022).

² Section 985.135(4), F.S.

determine the most appropriate treatment plan and setting for the child.³ Once a child is in the custody of the DJJ, the DJJ determines whether detention care is appropriate.⁴ The DJJ makes an initial decision regarding detention care placement using the “Detention Risk Assessment Instrument.”⁵ The DJJ serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.⁶

A child is entitled to a detention hearing within 24 hours of being taken into custody or placed in detention care. At the hearing, the court may order continued detention care under certain circumstances.⁷ “Detention care” means “the temporary care of a child in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order.”⁸ There are two types of detention care, including:

- “Secure detention” which is the temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- “Supervised release detention” which is the temporary, no secure custody of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.⁹

The use of detention care must be based primarily on 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 the illegal possession of a firearm;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court by: intentionally disrupting the administration of the court; intentionally disobeying a court order; or engaging in a punishable act or speech in the court’s presence which shows disrespect for the authority and dignity of the court; or
- Requests protection from imminent bodily harm.¹⁰

Additionally, the use of detention care may not be used for 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 interrogation or investigation; or

³ Section 985.14(2), F.S. The intake process consists of a preliminary screening and may be followed by a comprehensive assessment, consisting of a full mental health, cognitive impairment, substance abuse, or psychosexual evaluation.

⁴ Section 985.25(1), F.S.

⁵ Sections 985.25(1) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument must be developed, when and how it must be updated, and what factors the assessment instrument should identify when evaluating a child to determine whether detention placement is appropriate.

⁶ Section 985.145(1), F.S.

⁷ Section 985.255(1), F.S.

⁸ Section 985.03(18), F.S.

⁹ *Id.*

¹⁰ Section 985.24(1), F.S.

- Due to a lack of more appropriate facilities.¹¹

Further, a child who is alleged to be dependent under ch. 39, F.S., may not, under any circumstances, be placed into secure detention care.¹²

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. The court may extend the length of detention for an additional 9 days if there is good cause shown that the nature of the charge requires additional time for the prosecution or defense of the case and the child is charged with one of the following offenses:

- Capital felony;
- Life felony;
- First degree felony; or
- Second degree felony involving violence against any individual.¹³

A prolific juvenile offender¹⁴ must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.¹⁵ If secure detention care is ordered by the court for a prolific juvenile offender, such secure detention care must not exceed 21 days unless an adjudicatory hearing for the case has been commenced in good faith, or secure detention care is extended for 9 days as described above.¹⁶

The time limitations on detention care do not include periods of delay resulting from a continuance granted by the court. Upon an order granting a continuance, the court must conduct a hearing at the end of each 72- hour period to determine the need for continued detention.¹⁷

The period of supervised release detention care is tolled upon the allegation that a child has violated his or her supervised release detention. This period remains tolled until the court makes a ruling on the alleged violation. If the court finds the child in violation, the number of day the child has served on any type of detention before the violation is excluded from the time limitations described above.¹⁸

¹¹ Section 985.24(2), F.S.

¹² Section 985.24(3), F.S.

¹³ Section 985.26, F.S.

¹⁴ Section 985.255, F.S., provides that a “prolific juvenile offender” means a child that is charged with a delinquent act that would be a felony if committed by an adult, has a prior adjudication or adjudication withheld for a delinquent act that would be a felony if committed by an adult, and has 5 or more arrests, adjudications, or adjudications withheld, 3 of which must have been felony offenses.

¹⁵ Section 985.26, F.S.

¹⁶ Section 985.26(2)(c), F.S.

¹⁷ Section 985.26(4)(a), F.S.

¹⁸ Section 985.26(4)(b), F.S.

Cost Sharing of Detention Care

Cost sharing is governed by s. 985.6865, F.S., which provides that each fiscal year, the DJJ must calculate and provide to every county that is not fiscally constrained¹⁹ and that does not provide its own detention care, its annual percentage share.²⁰

The DJJ calculates a county's annual percentage share by dividing the total number of detention days for children residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for children in all non-fiscally constrained counties. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.²¹

Counties that are required to pay their share of detention costs must incorporate sufficient funds to pay its share of detention costs into its annual budget.²² Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.²³ The DJJ will determine quarterly whether counties are complying with this section.²⁴

The State must pay all costs of detention care for children:

- Residing in a fiscally constrained county.
- Residing out of State.
- Housed in state detention centers from counties that provide their own detention care for children.²⁵

III. Effect of Proposed Changes:

The bill amends s. 985.24, F.S., providing that a child who is placed on supervised release detention care must comply with any available condition established by the DJJ or ordered by the court, including electronic monitoring, if the court finds such condition necessary to preserve public safety or to ensure the child's safety or appearance in court.

The bill clarifies that a child who is alleged to be dependent under ch. 39, F.S., *but who is not alleged to have committed a delinquent act or violation of law*, may not be placed into secure detention.

The bill amends s. 985.26, F.S., providing that the court may order a child be placed on *supervised release detention* care for any time period until an adjudicatory hearing for the case has been completed. If a child has served 60 days on supervised release detention care, the court must conduct a hearing within 15 days after the 60th day, to determine if continued supervised

¹⁹ Section 985.6865(1)(b), F.S., defines "fiscally constrained county" as a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

²⁰ Section 985.6865(2), F.S.

²¹ *Id.*

²² Section 985.6865(4), F.S.

²³ Section 985.6865(5), F.S.

²⁴ Section 985.6865(6), F.S.

²⁵ Section 985.6865(3), F.S.

release detention care is warranted. At such hearing, the court may order the child to remain on supervised release detention care until an adjudicatory hearing has been completed, upon:

- Good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case; or
- Consideration of the totality of the circumstances, including the preservation of public safety.

The bill specifies that, except in specified circumstances, a child may not be held in *secure detention* for longer than 21 days unless an adjudicatory hearing has been commenced. Under current law, a child generally may not be held in *secure* or *supervised release detention care* for longer than 21 days, except in specified circumstances.

Additionally, the bill provides that the court may transition a child between secure detention care and supervised release detention care, including electronic monitoring, if the court finds such placement is necessary to:

- Preserve public safety;
- Ensure the child's safety;
- Ensure appearance in court; or
- Ensure compliance with any condition of supervised release detention care.

Each period of secure detention care or supervised release detention care counts toward the time limitations, whether served consecutively or nonconsecutively.

Currently, upon a showing of good cause that additional time for the prosecution or defense is needed, the court may extend the length of detention for an additional 9 days, for specified offenses. The bill authorizes a court to also extend the length of detention based upon the totality of the circumstances, including the preservation of public safety, warranting an extension. Additionally, the bill increases the length of such extension from 9 days to up to 21 days. The bill expands the list of specified offenses to include:

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The bill removes language contained in s. 985.26(4), F.S., relating to time limitations of preadjudicatory detention care because this language conflicts with new provisions relating to time limitations in the bill.

Any electronic monitoring ordered by a court as a condition of supervised release detention care may be supervised by the DJJ, a law enforcement agency, or the department and a law enforcement agency working in partnership. However, the bill specifies that it does not require a law enforcement agency to supervise a child placed on electronic monitoring.

This bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The overall impact of the bill on the DJJ is indeterminate. There may be a positive indeterminate bed impact (unquantifiable increase in the need for secure detention beds) on the DJJ due to the increase in the number of children who may be held in secure detention for longer periods of time. This bed impact may be partially offset by the reduction in detention bed needs due to the use of supervised release detention. There may also be a positive workload impact on the DJJ due to the extended period of supervision under supervised release detention. It is unclear whether the fiscal impact due to the longer permissible period of secure detention will be offset by the court's ability to transfer a child from secure to supervised release detention. The bill may also increase the demand for electronic monitoring.

Additionally, all non-fiscally constrained counties pay for half of their prior year actual detention casts. More children detained in detention care would mean higher cost to the counties to pay for their detention care.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.24 and 985.26.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Rules on February 23, 2022:

The committee substitute:

- Decreases the number of days that a child must serve on supervised release detention before the court must set a hearing, from 75 days to 60 days, and removes the language excluding Saturday, Sunday, and legal holidays from the time frames in which the court must conduct a hearing for continued detention. Removal of this language complies with the Rule 8.180 of Juvenile Procedure and Rule 2.514 of Practice and Litigation Procedures.
- Specifies that each period of secure detention and supervised release detention count toward the time limitations provided in the bill.
- Clarifies that a child who is dependent under ch. 39, F.S., and who is not alleged to have committed a crime, may not be placed in secure detention.
- Revises and removes conflicting language relating to time limitations for detention.

B. Amendments:

None.