

Due Process and Anti-Unlawful Detention Act (Combined Single-Bill Version)

A bill to be entitled

An act relating to unlawful detention without charge; creating s. 901.245, Florida Statutes; providing a short title; providing legislative findings and intent; providing definitions; prohibiting the detention of any person by a custodial agency or a detention facility beyond specified time periods without a judicial probable cause determination, the filing of formal charges, or entry of a lawful civil commitment order; providing for a limited extension upon judicial order for good cause shown; requiring mandatory release upon expiration of the applicable period absent qualifying charges or an order; providing for expedited habeas corpus proceedings and specifying hearing and decision deadlines; creating a civil cause of action for damages against a custodial agency, a detention facility, and responsible officials in their individual capacities; providing for statutory damages, actual damages, and punitive damages; abrogating certain immunity defenses as to this cause of action; providing for mandatory attorney fees and costs to a prevailing petitioner or plaintiff; providing criminal penalties for a public official or employee who knowingly detains a person beyond the applicable period without lawful authority; providing whistleblower protection for employees who report violations; requiring quarterly reporting by custodial agencies and detention facilities to the Legislature; providing construction; providing for severability; providing an effective date.

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

Section 1. Section 901.245, Florida Statutes, is created to read:

901.245 Unlawful detention without charge.—

(1) SHORT TITLE.—This section may be cited as the “Due Process and Anti-Unlawful Detention Act.”

(2) LEGISLATIVE FINDINGS AND INTENT.—

- (a) The Legislature finds that the deprivation of a person’s physical liberty by an agency of this state, a political subdivision of this state, or an entity operating under contract with this state, without prompt judicial oversight and without the timely filing of formal charges or entry of a lawful commitment order, is inconsistent with the due process and liberty protections guaranteed under Article I, sections 2, 9, and 13 of the Florida Constitution.
- (b) The Legislature further finds that indefinite or prolonged detention without charge — regardless of whether the person detained is held pursuant to a criminal arrest, a civil commitment process, or an immigration-related hold at a facility operated by or under contract with this state — imposes serious harm on detained individuals and their

families and undermines public confidence in the fairness of the state's custodial institutions.

- (c) It is the intent of the Legislature to establish clear, enforceable, statewide time limits on detention without charge, to guarantee a meaningful and expedited judicial remedy to any person held in violation of those limits, and to hold custodial agencies, detention facilities, and responsible officials accountable when those limits are violated.

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

- (a) “Custodial agency” means a law enforcement agency, correctional agency, or other agency of this state or a political subdivision of this state that has physical custody of a person.
- (b) “Detention facility” means a jail, prison, juvenile detention facility, civil commitment facility, or other facility used to hold a person in custody, including a facility operated by a private entity under contract with this state or a political subdivision of this state. The term does not include a facility operated exclusively by and under the exclusive custodial authority of the United States or an agency thereof.
- (c) “Formal charge” means:
 - 1. For a person held on suspicion of a criminal offense, the filing of an information, indictment, or notice to appear that satisfies applicable Florida Rules of Criminal Procedure;
 - 2. For a person held pursuant to a civil commitment process, the filing of a petition for commitment supported by the sworn statement or evaluation required by the applicable statute; or
 - 3. For a person held at a detention facility described in paragraph (b) in connection with a civil immigration matter, the issuance of a charging document by the appropriate authority, or a lawful order authorizing continued detention entered by a court or other tribunal of competent jurisdiction.
- (d) “Responsible official” means an officer, employee, director, warden, or administrator of a custodial agency or detention facility who has authority over, or personal knowledge of and the ability to remedy, the continued detention of a person in violation of this section.

(4) TIME LIMITS ON DETENTION WITHOUT CHARGE.—

- (a) *Probable cause determination.*—A person arrested without a warrant and held in custody shall receive a judicial determination of probable cause within 48 hours after the arrest, consistent with the requirements of the Fourth Amendment to the United States Constitution and Article I, section 9 of the Florida Constitution.
- (b) *Charging deadline.*—Except as provided in paragraph (c), a person may not be held in the custody of a custodial agency or detention facility for more than 7 days after the initial detention without a formal charge having been filed or a lawful commitment order having been entered.

- (c) *Limited extension.*—A court of competent jurisdiction may, on motion of the custodial agency or detention facility and after a hearing at which the detained person or their counsel has the right to be heard, grant a single extension of the deadline in paragraph (b) of up to 7 additional days, upon a finding of good cause. Good cause is limited to: an active and demonstrable ongoing investigation requiring additional time to responsibly file charges; a state of emergency declared under chapter 252 that has materially disrupted court or agency operations; or the unavailability of an essential witness or piece of evidence despite the exercise of due diligence. In no event may the combined period of detention without a formal charge exceed 14 days.
- (d) *Mandatory release.*—Upon expiration of the applicable period under paragraph (b) or (c) without a formal charge having been filed or a lawful commitment order entered, the custodial agency or detention facility shall immediately release the person. Release under this paragraph does not bar the subsequent filing of charges consistent with any otherwise-applicable statute of limitations, and does not itself entitle the person to be free from a lawfully issued arrest warrant obtained thereafter.

(5) EXPEDITED HABEAS CORPUS.—

- (a) A person held in violation of this section, or someone acting on that person’s behalf, may petition the circuit court for a writ of habeas corpus at any time.
- (b) The court shall hold a hearing on a petition filed under this subsection within 24 hours after filing, excluding weekends and legal holidays, and shall issue a decision within 48 hours after the hearing concludes.
- (c) At a hearing under this subsection, the burden is on the custodial agency or detention facility to establish, by clear and convincing evidence, that the detention complies with this section.
- (d) If the court finds the detention does not comply with this section, the court shall order the immediate release of the petitioner and shall refer the matter to the state attorney or the Attorney General for consideration of enforcement under subsection (7).

(6) CIVIL CAUSE OF ACTION.—

- (a) A person detained in violation of this section has a civil cause of action against the custodial agency or detention facility responsible for the violation, and against any responsible official, in that official’s individual capacity, who knowingly or with reckless disregard permitted the violation to continue.
- (b) A plaintiff who prevails under this subsection is entitled to recover:
 - 1. Statutory damages of \$500 for each day, or portion of a day, that the plaintiff was detained in violation of this section;
 - 2. Actual damages, including for physical harm, lost wages, and emotional distress; and
 - 3. Where the violation was willful or in reckless disregard of the plaintiff’s rights under this section, punitive damages against a responsible official found individually liable.

- (c) A court shall award reasonable attorney fees and costs to a plaintiff who prevails on a claim under this subsection. The court may not award attorney fees or costs to a defendant on a claim under this subsection unless the court finds the claim was filed in bad faith.
- (d) Neither sovereign immunity under s. 768.28 nor qualified immunity as recognized under state common law bars a claim brought under this subsection. This paragraph does not abrogate the immunity of a judge acting within the judge's judicial capacity, a legislator acting within the legislator's legislative capacity, or a prosecutor acting within the scope of prosecutorial discretion to charge or decline to charge an offense.
- (e) An action under this subsection must be commenced within 4 years after the date the violation ceased.

(7) CRIMINAL PENALTIES; OFFICIAL ACCOUNTABILITY.—

- (a) A responsible official who knowingly detains, or knowingly directs or permits the continued detention of, a person beyond the applicable period under subsection (4), without lawful authority to do so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (b) A second or subsequent violation under paragraph (a) by the same responsible official, or a first violation in which the unlawful detention continues for more than 7 days beyond the applicable deadline, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (c) A conviction under this subsection does not preclude a civil action under subsection (6) arising from the same conduct.

(8) WHISTLEBLOWER PROTECTION.—A custodial agency or detention facility, or an official thereof, may not discharge, discipline, or otherwise retaliate against an employee or contractor for reporting, in good faith, a suspected violation of this section to a supervisor, an inspector general, a state attorney, the Attorney General, or a court. An employee or contractor subjected to retaliation in violation of this subsection has a cause of action under s. 448.102 or successor provisions of the Florida Whistle-blower's Act.

(9) REPORTING REQUIREMENTS.—Each custodial agency and each detention facility shall submit a quarterly report to the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability, documenting: the number of persons held beyond 48 hours without a probable cause determination; the number of persons held beyond the deadlines in subsection (4); the number of extensions granted under paragraph (4)(c) and the reasons cited; and the number of releases ordered under this section. Reports submitted under this subsection are public records.

(10) CONSTRUCTION.—

- (a) This section does not apply to a person held exclusively in the custody of the United States or an agency thereof, at a facility operated exclusively by and under the exclusive custodial authority of the United States, to the extent such application would be preempted by federal law.

- (b) This section does not limit any other right or remedy available to a detained person under the Florida Constitution, the United States Constitution, or any other provision of law.
- (c) This section applies to conduct occurring on or after the effective date of this act.

Section 2. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 3. This act shall take effect July 1, 2027.