

By Representative Betancourt

1 A bill to be entitled
2 An act relating to juvenile justice; amending
3 s. 39.01, F.S.; providing that the penalty
4 imposed for the offense of escaping from a
5 detention facility applies to a juvenile who
6 escapes from a low-risk residential facility;
7 amending s. 39.021, F.S.; revising requirements
8 for the Department of Juvenile Justice and the
9 Juvenile Justice Advisory Board with respect to
10 reporting to the Legislature on the costs and
11 benefits of the department's commitment
12 programs; amending s. 39.042, F.S.; requiring
13 that a juvenile who is charged with domestic
14 violence be placed in respite care if the
15 juvenile does not meet the criteria for
16 detention; amending s. 39.044, F.S.;
17 authorizing the detention of a juvenile who is
18 charged with a felony offense of domestic
19 violence; repealing s. 39.0445, F.S., relating
20 to juvenile justice domestic violence
21 offenders; amending s. 39.054, F.S.; deleting a
22 requirement that monetary restitution required
23 from a juvenile be secured by a promissory note
24 from the juvenile's parent or guardian;
25 authorizing the court to take further action if
26 the restitution is not made; authorizing the
27 court to order the juvenile's parent or
28 guardian to make restitution if the parent or
29 guardian failed to make a diligent and
30 good-faith effort to prevent the juvenile from
31 engaging in delinquent acts; amending s.

1 39.057, F.S.; clarifying the minimum period a
2 juvenile who is committed to certain programs
3 is required to participate in the boot camp
4 component of the program; revising requirements
5 for the department in evaluating boot camp
6 programs; amending s. 39.059, F.S.; revising
7 circumstances under which a juvenile may be
8 prosecuted as an adult; prohibiting the court
9 from imposing a combination of adult and
10 juvenile sanctions against a juvenile;
11 providing for supervision by the department to
12 terminate if a juvenile is sentenced as an
13 adult; amending s. 39.076, F.S.; revising
14 standards for screening department personnel;
15 providing an effective date.

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

18
19 Section 1. Paragraph (b) of subsection (59) of section
20 39.01, Florida Statutes, 1996 Supplement, is amended to read:

21 39.01 Definitions.--When used in this chapter:

22 (59) "Restrictiveness level" means the level of
23 custody provided by programs that service the custody and care
24 needs of committed children. There shall be five
25 restrictiveness levels:

26 (b) Low-risk residential.--Youth assessed and
27 classified for placement in programs at this level represent a
28 low risk to themselves and public safety and do require
29 placement and services in residential settings. Programs or
30 program models in this restrictiveness level include: Short
31 Term Offender Programs (STOP), group treatment homes, family

1 group homes, proctor homes, and Short Term Environmental
2 Programs (STEP). Section 39.061 applies to children placed in
3 programs in this restrictiveness level.

4 Section 2. Subsection (13) of section 39.021, Florida
5 Statutes, 1996 Supplement, is amended to read:

6 39.021 Administering the juvenile justice continuum.--

7 (13) The Department of Juvenile Justice in
8 consultation with the Juvenile Justice Advisory Board and
9 providers shall develop a cost-benefit model and apply the
10 model to each commitment program. Program recommitment rates
11 shall be a component of the model. The cost-benefit model
12 shall compare program costs to benefits ~~to produce a~~
13 ~~cost-benefit ratio.~~ A report ranking commitment programs
14 based on cost-benefit ~~ratios~~ shall be submitted to the
15 appropriate substantive and appropriations committees of each
16 house of the Legislature, no later than December 31 of each
17 year. It is the intent of the Legislature that continual
18 development efforts take place to improve the validity and
19 reliability of the cost-benefit model.

20 Section 3. Subsection (2) of section 39.042, Florida
21 Statutes, is amended to read:

22 39.042 Use of detention.--

23 (2)(a) All determinations and court orders regarding
24 placement of a child into detention care shall comply with all
25 requirements and criteria provided in this part and shall be
26 based on a risk assessment of the child, unless the child is
27 placed into detention care as provided in subparagraph (b)3.

28 (b)1. The risk assessment instrument for detention
29 care placement determinations and orders shall be developed by
30 the Department of Juvenile Justice in agreement with
31 representatives appointed by the following associations: the

1 Conference of Circuit Judges of Florida, the Prosecuting
2 Attorneys Association, and the Public Defenders Association.
3 Each association shall appoint two individuals, one
4 representing an urban area and one representing a rural area.
5 The parties involved shall evaluate and revise the risk
6 assessment instrument as is considered necessary using the
7 method for revision as agreed by the parties. The risk
8 assessment instrument shall take into consideration, but need
9 not be limited to, prior history of failure to appear, prior
10 offenses, offenses committed pending adjudication, any
11 unlawful possession of a firearm, theft of a motor vehicle or
12 possession of a stolen motor vehicle, and community control
13 status at the time the child is taken into custody. The risk
14 assessment instrument shall also take into consideration
15 appropriate aggravating and mitigating circumstances, and
16 shall be designed to target a narrower population of children
17 than s. 39.044(2). The risk assessment instrument shall also
18 include any information concerning the child's history of
19 abuse and neglect. The risk assessment shall indicate whether
20 detention care is warranted, and, if detention care is
21 warranted, whether the child should be placed into secure,
22 nonsecure, or home detention care.

23 2. If, at the detention hearing, the court finds a
24 material error in the scoring of the risk assessment
25 instrument, the court may amend the score to reflect factual
26 accuracy.

27 3. A child who is charged with committing an offense
28 of domestic violence as defined in s. 741.28(1) and who does
29 not meet detention criteria may be held in respite care ~~secure~~
30 ~~detention~~ for up to 48 hours ~~if a respite home or similar~~
31 ~~authorized residential facility is not available~~. The court

1 may order that the child continue to be held in respite care
2 ~~secure detention~~ provided that a hearing is held at the end of
3 each 48-hour period, excluding Saturdays, Sundays, and legal
4 holidays, in which the state attorney and the department may
5 recommend to the court that the child continue to be held in
6 respite care ~~secure detention~~.

7 Section 4. Subsection (2) of section 39.044, Florida
8 Statutes, 1996 Supplement, is amended to read:

9 39.044 Detention.--

10 (2) Subject to the provisions of subsection (1), a
11 child taken into custody and placed into nonsecure or home
12 detention care or detained in secure detention care prior to a
13 detention hearing may continue to be detained by the court if:

14 (a) The child is alleged to be an escapee or an
15 absconder from a commitment program, a community control
16 program, furlough, or aftercare supervision, or is alleged to
17 have escaped while being lawfully transported to or from such
18 program or supervision;

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

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

25 (d) The child is charged with committing a felony ~~an~~
26 offense of domestic violence as defined in s. 741.28(1) and is
27 detained as provided in s. 39.042(2)(b)3.;

28 (e) The child is charged with a capital felony, a life
29 felony, a felony of the first degree, a felony of the second
30 degree that does not involve a violation of chapter 893, or a
31 felony of the third degree that is also a crime of violence,

1 including any such offense involving the use or possession of
2 a firearm; or

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

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

10 2. Has a record of law violations prior to court
11 hearings;

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

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

16 5. Is found to have been in possession of a firearm.
17

18 A child who meets any of these criteria and who is ordered to
19 be detained pursuant to this subsection shall be given a
20 hearing within 24 hours after being taken into custody. The
21 purpose of the detention hearing is to determine the existence
22 of probable cause that the child has committed the delinquent
23 act or violation of law with which he or she is charged and
24 the need for continued detention. Unless a child is detained
25 under paragraph (d), the court shall utilize the results of
26 the risk assessment performed by the intake counselor or case
27 manager and, based on the criteria in this subsection, shall
28 determine the need for continued detention. A child placed
29 into secure, nonsecure, or home detention care may continue to
30 be so detained by the court pursuant to this subsection. If
31 the court orders a placement more restrictive than indicated

1 by the results of the risk assessment instrument, the court
2 shall state, in writing, clear and convincing reasons for such
3 placement. Except as provided in s. 790.22(8) or in
4 subparagraph (10)(a)2., paragraph (10)(b), paragraph (10)(c),
5 or paragraph (10)(d), when a child is placed into secure or
6 nonsecure detention care, or into a respite home or other
7 placement pursuant to a court order following a hearing, the
8 court order must include specific instructions that direct the
9 release of the child from such placement no later than 5 p.m.
10 on the last day of the detention period specified in paragraph
11 (5)(b) or paragraph (5)(c), or subparagraph (10)(a)1.,
12 whichever is applicable, unless the requirements of such
13 applicable provision have been met or an order of continuance
14 has been granted pursuant to paragraph (5)(d).

15 Section 5. Paragraphs (f) and (i) of subsection (1) of
16 section 39.054, Florida Statutes, are amended to read:

17 39.054 Powers of disposition.--

18 (1) The court that has jurisdiction of an adjudicated
19 delinquent child may, by an order stating the facts upon which
20 a determination of a sanction and rehabilitative program was
21 made at the disposition hearing:

22 (f) As part of the community control program to be
23 implemented by the Department of Juvenile Justice, or, in the
24 case of a committed child, as part of the community-based
25 sanctions ordered by the court at the disposition hearing or
26 before the child's release from commitment, order the child to
27 make restitution in money, ~~through a promissory note cosigned~~
28 ~~by the child's parent or guardian,~~ or in kind for any damage
29 or loss caused by the child's offense in a reasonable amount
30 or manner to be determined by the court. The clerk of the
31 circuit court shall be the receiving and dispensing agent. In

1 such case, the court shall order the child or the child's
2 parent or guardian to pay to the office of the clerk of the
3 circuit court an amount not to exceed the actual cost incurred
4 by the clerk as a result of receiving and dispensing
5 restitution payments. The clerk shall notify the court if
6 restitution is not made, and the court shall take any further
7 action that is necessary against the child or the child's
8 parent or guardian.A finding by the court, after a hearing,
9 that the parent or guardian has made diligent and good faith
10 efforts to prevent the child from engaging in delinquent acts
11 absolves the parent or guardian of liability for restitution
12 under this paragraph.

13 (i) In addition to the sanctions imposed on the child,
14 order the parent or guardian of the child to perform community
15 service if the court finds that the parent or guardian did not
16 make a diligent and good-faith ~~good-faith~~ effort to prevent
17 the child from engaging in delinquent acts. The court may also
18 order the parent or guardian to make restitution in money or
19 in kind for any damage or loss caused by the child's offense.
20 The court shall determine a reasonable amount or manner of
21 restitution, and payment shall be made to the clerk of the
22 circuit court as provided in paragraph (f).

23 Section 6. Subsections (6) and (9) of section 39.057,
24 Florida Statutes, are amended to read:

25 39.057 Boot camp for children.--

26 (6) A boot camp operated by the department, a county,
27 or a municipality must provide for the following minimum
28 periods of participation:

29 (a) A participant in a low-risk residential program
30 must spend at least 2 months in the boot camp component of the
31 program and 2 months in aftercare.

1 (b) A participant in a moderate-risk residential
2 program ~~or a high-risk residential program~~ must spend at least
3 4 months in the boot camp component of the program and 4
4 months in aftercare.

5
6 This subsection does not preclude the operation of a program
7 that requires the participants to spend more than 4 months in
8 the boot camp component of the program or that requires the
9 participants to complete two sequential programs of 4 months
10 each in the boot camp component of the program.

11 (9) The department shall keep records and monitor
12 criminal activity, educational progress, and employment
13 placement of all boot camp program participants in department,
14 county, and municipal boot camp programs after their release
15 from the program. The department must publish an outcome
16 evaluation study of each boot camp program within 18 months
17 after the the fourth platoon has graduated ~~program becomes~~
18 ~~operational, which includes a comparison of criminal activity,~~
19 ~~educational progress, and employment placements of children~~
20 ~~completing the program with the criminal activity, educational~~
21 ~~progress, and employment records of children completing other~~
22 ~~types of programs.~~

23 Section 7. Section 39.059, Florida Statutes, is
24 amended to read:

25 39.059 Community control or commitment of a child to
26 the department; disposition as an adult ~~children prosecuted as~~
27 ~~adults.--~~

28 (1) A child who is found to have committed a
29 ~~delinquent act or~~ violation of law may, as an alternative to
30 adult ~~other~~ dispositions, be committed to the department for
31 treatment in an appropriate program for children outside the

1 adult correctional system ~~or~~, be placed in a community control
2 program for juveniles, ~~be classified as a youthful offender,~~
3 ~~or be classified as a serious or habitual juvenile offender~~
4 ~~pursuant to s. 39.058. If the court determines that the child~~
5 ~~meets the criteria of a serious or habitual delinquent child,~~
6 ~~the intake counselor or case manager shall consult with~~
7 ~~designated staff from a serious or habitual juvenile offender~~
8 ~~program to further assess the appropriateness of placing the~~
9 ~~child in such program.~~

10 (2) Upon a plea of guilty ~~or a finding of guilt~~, the
11 court may refer the case to the department for investigation
12 and recommendation as to the suitability of its programs for
13 the child.

14 (3) In order to utilize this section, the court shall
15 stay ~~and withhold~~ adjudication of guilt and instead shall
16 adjudge the child to have committed a delinquent act.
17 Adjudication of delinquency shall not be deemed a conviction,
18 nor shall it operate to impose any of the civil disabilities
19 ordinarily resulting from a conviction. The court shall impose
20 an adult sanction or a juvenile sanction and may not sentence
21 the child to a combination of adult and juvenile punishments.

22 (4) Upon adjudicating a child delinquent under
23 subsection (1), the court may ~~shall~~ have the power by order
24 to:

25 (a) Place the child in a community control program
26 under the supervision of the department for an indeterminate
27 period of time until the child reaches the age of 19 years or
28 sooner if discharged by order of the court.

29 (b) Commit the child to the department ~~for treatment~~
30 ~~in an appropriate program for children~~ for an indeterminate
31 period of time until the child is 19 years of age, or 21 years

1 of age if the child is committed to a maximum-risk program, or
2 until the child is ~~or sooner~~ if discharged by the department.

3 The department shall notify the court of its intent to
4 discharge no later than 14 days prior to discharge. Failure
5 of the court to timely respond to the department's notice
6 shall be considered approval for discharge.

7 ~~(c) Commit the child to the department for placement~~
8 ~~in a serious or habitual delinquent children program for an~~
9 ~~indeterminate period of time until the child is 21 or sooner~~
10 ~~if discharged by the treatment provider and the department.~~
11 ~~The department shall notify the court of its intent to~~
12 ~~discharge no later than 14 days prior to discharge. Failure~~
13 ~~of the court to timely respond to the department's notice~~
14 ~~shall be considered approval for discharge.~~

15 (5) When the court orders commitment of a child to the
16 Department of Juvenile Justice for treatment in any of the
17 department's programs for children, the court shall order the
18 natural or adoptive parents of such child, the natural father
19 of such child born out of wedlock who has acknowledged his
20 paternity in writing before the court, or guardian of such
21 child's estate, if possessed of assets which under law may be
22 disbursed for the care, support, and maintenance of the child,
23 to pay fees to the department equal to the actual cost of the
24 care, support, and maintenance of the child, unless the court
25 determines that the parent or legal guardian of the child is
26 indigent. The court may reduce the fees or waive the fees upon
27 a showing by the parent or guardian of an inability to pay the
28 full cost of the care, support, and maintenance of the child.
29 In addition, the court may waive the fees if it finds that the
30 child's parent or guardian was the victim of the child's
31 delinquent act or violation of law or if the court finds that

1 the parent or guardian has made a diligent and good faith
2 effort to prevent the child from engaging in the delinquent
3 act or violation of law. When the order affects the
4 guardianship estate, a certified copy of the order shall be
5 delivered to the judge having jurisdiction of the guardianship
6 estate.

7 (6)(a) If a child proves not to be suitable to a
8 community control program under the provisions of paragraph
9 (4)(a), the court shall have the power to commit the child to
10 the department as described in paragraph (4)(b) ~~or paragraph~~
11 ~~(4)(c)~~.

12 (b) If a child proves not to be suitable to a
13 community control program or for a treatment program under the
14 provisions of paragraph (4)(b) ~~or a serious or habitual~~
15 ~~delinquent children program under the provisions of paragraph~~
16 ~~(4)(c)~~, the court may revoke the previous adjudication of
17 delinquency, impose an adjudication of guilt, ~~classify the~~
18 ~~child as a youthful offender when appropriate~~, and impose any
19 sentence that ~~which~~ it may lawfully impose, giving credit for
20 all time spent by the child in the department.

21 (7)(a) At the sentencing hearing the court shall
22 receive and consider a presentence investigation report by the
23 Department of Corrections regarding the suitability of the
24 offender for disposition as an adult or as, a juvenile, ~~or a~~
25 ~~youthful offender~~. The presentence investigation report must
26 include a comments section prepared by the Department of
27 Juvenile Justice, with its recommendations as to disposition.
28 This report requirement may be waived by the offender.

29 (b) After considering the presentence investigation
30 report, the court shall give all parties present at the
31 hearing an opportunity to comment on the issue of sentence and

1 any proposed rehabilitative plan. Parties to the case include
2 the parent, guardian, or legal custodian of the offender; the
3 offender's counsel; the state attorney; representatives of the
4 Department of Corrections and the Department of Juvenile
5 Justice; the victim or victim's representative;
6 representatives of the school system; and the law enforcement
7 officers involved in the case.

8 (c) In determining whether to impose ~~youthful offender~~
9 ~~or~~ juvenile sanctions instead of adult sanctions, the court
10 shall consider the following criteria:

11 1. The seriousness of the offense to the community and
12 whether the community would best be protected by juvenile,
13 ~~youthful offender,~~ or adult sanctions.

14 2. Whether the offense was committed in an aggressive,
15 violent, premeditated, or willful manner.

16 3. Whether the offense was against persons or against
17 property, with greater weight being given to offenses against
18 persons, especially if personal injury resulted.

19 4. The sophistication and maturity of the offender.

20 5. The record and previous history of the offender,
21 including:

22 a. Previous contacts with the Department of
23 Corrections, the Department of Juvenile Justice, the
24 Department of Children and Family ~~Health and Rehabilitative~~
25 Services, other law enforcement agencies, and the courts.

26 b. Prior periods of probation or community control.

27 c. Prior adjudications that the offender committed a
28 delinquent act or violation of law as a child.

29 d. Prior commitments to the Department of Juvenile
30 Justice, the Department of Children and Family ~~Health and~~
31 ~~Rehabilitative~~ Services, or other facilities or institutions.

1 6. The prospects for adequate protection of the public
2 and the likelihood of deterrence and reasonable rehabilitation
3 of the offender if assigned to services and facilities of the
4 Department of Juvenile Justice.

5 7. Whether the Department of Juvenile Justice has
6 appropriate programs, facilities, and services immediately
7 available.

8 8. Whether ~~youthful offender~~ or adult sanctions would
9 provide more appropriate punishment and deterrence to further
10 violations of law than the imposition of juvenile sanctions.

11 (d) Any decision to impose adult sanctions must be in
12 writing, but is presumed appropriate, and the court is not
13 required to set forth specific findings or enumerate the
14 criteria in this subsection as any basis for its decision to
15 impose adult sanctions.

16 ~~(e) If the court determines not to impose youthful~~
17 ~~offender or adult sanctions, the court may order disposition~~
18 ~~pursuant to s. 39.054 as an alternative to youthful offender~~
19 ~~or adult sentencing.~~

20 ~~(f) After appropriate sanctions for the offense are~~
21 ~~determined, the court shall develop, approve, and order a plan~~
22 ~~of community control. The community control plan shall contain~~
23 ~~rules, requirements, conditions, and programs designed to~~
24 ~~encourage responsible and acceptable behavior and to promote~~
25 ~~the rehabilitation of the child and the protection of the~~
26 ~~community.~~

27 (e)(g) The court may receive and consider any other
28 relevant and material evidence, including other reports,
29 written or oral, in its effort to determine the action to be
30 taken with regard to the child, and may rely upon such

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1 evidence to the extent of its probative value even if the
2 evidence would not be competent in an adjudicatory hearing.

3 (f)~~(h)~~ The court shall notify any victim of the
4 offense of the hearing and shall notify, or subpoena if
5 appropriate, the parents, guardians, or legal custodians of
6 the child to attend the disposition hearing.

7 (g)~~(i)~~ Upon completion of the predisposition report,
8 it must be made available to the child's counsel and the state
9 attorney by the department prior to the disposition hearing.

10 (8) It is the intent of the Legislature that the
11 criteria and guidelines in this section ~~subsection~~ are
12 mandatory and that a determination of disposition under this
13 section ~~subsection~~ is subject to the right of the child to
14 appellate review under s. 39.069.

15 (9) When a child is sentenced as an adult, the court
16 shall dismiss any pending juvenile delinquency petition and
17 terminate the child's supervision by the department.

18 Section 8. Subsection (3) of section 39.076, Florida
19 Statutes, 1996 Supplement, is amended to read:

20 39.076 Departmental contracting powers; personnel
21 standards and screening.--

22 (3) The department shall require employment screening
23 pursuant to chapter 435, using the level 2 ~~±~~ standards for
24 screening set forth in that chapter, for personnel in
25 delinquency facilities, services, and programs.

26 Section 9. Section 39.0445, Florida Statutes, is
27 repealed.

28 Section 10. This act shall take effect October 1,
29 1997.

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LEGISLATIVE SUMMARY

Revises various provisions of ch. 39, F.S., relating to juvenile proceedings. Provides that a juvenile who escapes from a low-risk residential facility commits a third-degree felony. Provides for a juvenile who is charged with domestic violence to be held in respite care rather than in secure detention, unless the juvenile is charged with a felony offense of domestic violence. Deletes a requirement that the parent or guardian of a juvenile co-sign a promissory note if the juvenile is ordered to make monetary restitution. Authorizes the court to take further action against a juvenile, or the juvenile's parent or guardian, if the juvenile fails to make restitution. Revises requirements for the department in evaluating boot camps. Revises procedures for the court for purposes of determining whether to impose juvenile sanctions or adult sanctions. See bill for details.