

By Senator Grant

13-609-98

See HB

1 A bill to be entitled
 2 An act relating to alcohol and other substance
 3 abuse testing of a delinquent child; amending
 4 s. 985.231, F.S., relating to powers of
 5 disposition in delinquency cases; providing
 6 that the court may order a delinquent child
 7 placed in a community control or aftercare
 8 program to submit to random testing for alcohol
 9 or controlled substances; providing that the
 10 order may be made at the disposition or
 11 pursuant to the filing of a petition alleging
 12 violation of the conditions of the child's
 13 community control or aftercare supervision;
 14 reenacting s. 985.31(3)(e), F.S., relating to
 15 serious or habitual offenders, and s.
 16 985.311(3)(e), F.S., relating to intensive
 17 residential treatment program for offenders
 18 less than 13 years of age, to incorporate said
 19 amendment in references; providing an effective
 20 date.

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

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 24 Section 1. Paragraph (a) of subsection (1) of section
 25 985.231, Florida Statutes, is amended to read:
 26 985.231 Powers of disposition in delinquency cases.--
 27 (1)(a) The court that has jurisdiction of an
 28 adjudicated delinquent child may, by an order stating the
 29 facts upon which a determination of a sanction and
 30 rehabilitative program was made at the disposition hearing:
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1 1. Place the child in a community control program or
2 an aftercare program under the supervision of an authorized
3 agent of the Department of Juvenile Justice or of any other
4 person or agency specifically authorized and appointed by the
5 court, whether in the child's own home, in the home of a
6 relative of the child, or in some other suitable place under
7 such reasonable conditions as the court may direct. A
8 community control program for an adjudicated delinquent child
9 must include a penalty component such as restitution in money
10 or in kind, community service, a curfew, revocation or
11 suspension of the driver's license of the child, or other
12 nonresidential punishment appropriate to the offense and must
13 also include a rehabilitative program component such as a
14 requirement of participation in substance abuse treatment or
15 in school or other educational program. Upon the
16 recommendation of the department at the time of disposition,
17 or subsequent to disposition pursuant to the filing of a
18 petition alleging a violation of the child's conditions of
19 community control or aftercare supervision, the court may
20 order the child to submit to random testing for the purpose of
21 detecting and monitoring the use of alcohol or controlled
22 substances.

23 a. A restrictiveness level classification scale for
24 levels of supervision shall be provided by the department,
25 taking into account the child's needs and risks relative to
26 community control supervision requirements to reasonably
27 ensure the public safety. Community control programs for
28 children shall be supervised by the department or by any other
29 person or agency specifically authorized by the court. These
30 programs must include, but are not limited to, structured or
31 restricted activities as described in this subparagraph, and

1 shall be designed to encourage the child toward acceptable and
2 functional social behavior. If supervision or a program of
3 community service is ordered by the court, the duration of
4 such supervision or program must be consistent with any
5 treatment and rehabilitation needs identified for the child
6 and may not exceed the term for which sentence could be
7 imposed if the child were committed for the offense, except
8 that the duration of such supervision or program for an
9 offense that is a misdemeanor of the second degree, or is
10 equivalent to a misdemeanor of the second degree, may be for a
11 period not to exceed 6 months. When restitution is ordered by
12 the court, the amount of restitution may not exceed an amount
13 the child and the parent or guardian could reasonably be
14 expected to pay or make. A child who participates in any work
15 program under this part is considered an employee of the state
16 for purposes of liability, unless otherwise provided by law.

17 b. The court may conduct judicial review hearings for
18 a child placed on community control for the purpose of
19 fostering accountability to the judge and compliance with
20 other requirements, such as restitution and community service.
21 The court may allow early termination of community control for
22 a child who has substantially complied with the terms and
23 conditions of community control.

24 c. If the conditions of the community control program
25 or the aftercare program are violated, the agent supervising
26 the program as it relates to the child involved, or the state
27 attorney, may bring the child before the court on a petition
28 alleging a violation of the program. Any child who violates
29 the conditions of community control or aftercare must be
30 brought before the court if sanctions are sought. A child
31 taken into custody under s. 39.037 for violating the

1 conditions of community control or aftercare shall be held in
2 a consequence unit if such a unit is available. The child
3 shall be afforded a hearing within 24 hours after being taken
4 into custody to determine the existence of probable cause that
5 the child violated the conditions of community control or
6 aftercare. A consequence unit is a secure facility
7 specifically designated by the department for children who are
8 taken into custody under s. 985.207 for violating community
9 control or aftercare, or who have been found by the court to
10 have violated the conditions of community control or
11 aftercare. If the violation involves a new charge of
12 delinquency, the child may be detained under s. 985.215 in a
13 facility other than a consequence unit. If the child is not
14 eligible for detention for the new charge of delinquency, the
15 child may be held in the consequence unit pending a hearing
16 and is subject to the time limitations specified in s.
17 985.215. If the child denies violating the conditions of
18 community control or aftercare, the court shall appoint
19 counsel to represent the child at the child's request. Upon
20 the child's admission, or if the court finds after a hearing
21 that the child has violated the conditions of community
22 control or aftercare, the court shall enter an order revoking,
23 modifying, or continuing community control or aftercare. In
24 each such case, the court shall enter a new disposition order
25 and, in addition to the sanctions set forth in this paragraph,
26 may impose any sanction the court could have imposed at the
27 original disposition hearing. If the child is found to have
28 violated the conditions of community control or aftercare, the
29 court may:

30 (I) Place the child in a consequence unit in that
31 judicial circuit, if available, for up to 5 days for a first

1 violation, and up to 15 days for a second or subsequent
2 violation.

3 (II) Place the child on home detention with electronic
4 monitoring. However, this sanction may be used only if a
5 consequence unit is not available.

6 (III) Modify or continue the child's community control
7 program or aftercare program.

8 (IV) Revoke community control or aftercare and commit
9 the child to the department.

10 d. Notwithstanding s. 743.07 and paragraph (d), and
11 except as provided in s. 985.31, the term of any order placing
12 a child in a community control program must be until the
13 child's 19th birthday unless he or she is released by the
14 court, on the motion of an interested party or on its own
15 motion.

16 2. Commit the child to a licensed child-caring agency
17 willing to receive the child, but the court may not commit the
18 child to a jail or to a facility used primarily as a detention
19 center or facility or shelter.

20 3. Commit the child to the Department of Juvenile
21 Justice at a restrictiveness level defined in s. 985.03(45).
22 Such commitment must be for the purpose of exercising active
23 control over the child, including, but not limited to,
24 custody, care, training, urine monitoring, and treatment of
25 the child and furlough of the child into the community.
26 Notwithstanding s. 743.07 and paragraph (d), and except as
27 provided in s. 985.31, the term of the commitment must be
28 until the child is discharged by the department or until he or
29 she reaches the age of 21.

30 4. Revoke or suspend the driver's license of the
31 child.

1 5. Require the child and, if the court finds it
2 appropriate, the child's parent or guardian together with the
3 child, to render community service in a public service
4 program.

5 6. As part of the community control program to be
6 implemented by the Department of Juvenile Justice, or, in the
7 case of a committed child, as part of the community-based
8 sanctions ordered by the court at the disposition hearing or
9 before the child's release from commitment, order the child to
10 make restitution in money, through a promissory note cosigned
11 by the child's parent or guardian, or in kind for any damage
12 or loss caused by the child's offense in a reasonable amount
13 or manner to be determined by the court. The clerk of the
14 circuit court shall be the receiving and dispensing agent. In
15 such case, the court shall order the child or the child's
16 parent or guardian to pay to the office of the clerk of the
17 circuit court an amount not to exceed the actual cost incurred
18 by the clerk as a result of receiving and dispensing
19 restitution payments. The clerk shall notify the court if
20 restitution is not made, and the court shall take any further
21 action that is necessary against the child or the child's
22 parent or guardian. A finding by the court, after a hearing,
23 that the parent or guardian has made diligent and good faith
24 efforts to prevent the child from engaging in delinquent acts
25 absolves the parent or guardian of liability for restitution
26 under this subparagraph.

27 7. Order the child and, if the court finds it
28 appropriate, the child's parent or guardian together with the
29 child, to participate in a community work project, either as
30 an alternative to monetary restitution or as part of the
31 rehabilitative or community control program.

1 8. Commit the child to the Department of Juvenile
2 Justice for placement in a program or facility for serious or
3 habitual juvenile offenders in accordance with s. 985.31. Any
4 commitment of a child to a program or facility for serious or
5 habitual juvenile offenders must be for an indeterminate
6 period of time, but the time may not exceed the maximum term
7 of imprisonment that an adult may serve for the same offense.
8 The court may retain jurisdiction over such child until the
9 child reaches the age of 21, specifically for the purpose of
10 the child completing the program.

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

21 10. Subject to specific appropriation, commit the
22 juvenile sexual offender to the Department of Juvenile Justice
23 for placement in a program or facility for juvenile sexual
24 offenders in accordance with s. 985.308. Any commitment of a
25 juvenile sexual offender to a program or facility for juvenile
26 sexual offenders must be for an indeterminate period of time,
27 but the time may not exceed the maximum term of imprisonment
28 that an adult may serve for the same offense. The court may
29 retain jurisdiction over a juvenile sexual offender until the
30 juvenile sexual offender reaches the age of 21, specifically
31 for the purpose of completing the program.

1 Section 2. For the purpose of incorporating the
2 amendment to s. 985.231, Florida Statutes, in references
3 thereto, paragraph (e) of subsection (3) of section 985.31,
4 Florida Statutes, and paragraph (e) of subsection (3) of
5 section 985.311, Florida Statutes, are reenacted to read:

6 985.31 Serious or habitual juvenile offender.--

7 (3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND
8 TREATMENT.--

9 (e) After a child has been adjudicated delinquent
10 pursuant to s. 985.228, the court shall determine whether the
11 child meets the criteria for a serious or habitual juvenile
12 offender under ~~pursuant to~~ s. 985.03(47). If the court
13 determines that the child does not meet the ~~such~~ criteria, ~~the~~
14 ~~provisions of~~ s. 985.231(1) applies ~~shall apply~~.

15 985.311 Intensive residential treatment program for
16 offenders less than 13 years of age.--

17 (3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND
18 TREATMENT.--

19 (e) After a child has been adjudicated delinquent
20 pursuant to s. 985.228(5), the court shall determine whether
21 the child is eligible for an intensive residential treatment
22 program for offenders less than 13 years of age under ~~pursuant~~
23 ~~to~~ s. 985.03(7). If the court determines that the child does
24 not meet the criteria, ~~the provisions of~~ s. 985.231(1) applies
25 ~~shall apply~~.

26 Section 3. This act shall take effect October 1 of the
27 year in which enacted and shall apply to offenses committed on
28 or after that date.

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LEGISLATIVE SUMMARY

Allows a court that is hearing a delinquency case to order a delinquent child who has been placed in a community control or aftercare program to submit to random testing for alcohol or controlled substances. Provides that the order may be made at the disposition or pursuant to the filing of a petition alleging violation of the conditions of the child's community control or aftercare supervision.