

By Senator Saunders

25-1329-99

See HB

1 A bill to be entitled
2 An act relating to delinquent children;
3 amending ss. 985.231, 985.314, F.S.; specifying
4 criteria for the court-ordered commitment of
5 juvenile felony offenders to residential
6 commitment programs of the Department of
7 Juvenile Justice at described restrictiveness
8 levels; conforming provisions relating to the
9 court's powers of disposition in delinquency
10 cases; providing exceptions; conforming
11 cross-references; providing an effective date.

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

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15 Section 1. Paragraph (a) of subsections (1) and
16 subsections (2) and (3) of section 985.231, Florida Statutes,
17 1998 Supplement, are amended to read:

18 985.231 Powers of disposition in delinquency cases.--

19 (1)

20 (a) Unless otherwise provided in s. 985.314, a ~~The~~
21 court that has jurisdiction of a ~~an adjudicated delinquent~~
22 child who is adjudicated delinquent, or for whom adjudication
23 is withheld, may, by an order stating the facts upon which a
24 determination of a sanction and rehabilitative program was
25 made at the disposition hearing:

26 1. Place the child in a community control program or
27 an aftercare program under the supervision of an authorized
28 agent of the Department of Juvenile Justice or of any other
29 person or agency specifically authorized and appointed by the
30 court, whether in the child's own home, in the home of a
31 relative of the child, or in some other suitable place under

1 such reasonable conditions as the court may direct. A
2 community control program for an adjudicated delinquent child
3 must include a penalty component such as restitution in money
4 or in kind, community service, a curfew, revocation or
5 suspension of the driver's license of the child, or other
6 nonresidential punishment appropriate to the offense and must
7 also include a rehabilitative program component such as a
8 requirement of participation in substance abuse treatment or
9 in school or other educational program. Upon the
10 recommendation of the department at the time of disposition,
11 or subsequent to disposition pursuant to the filing of a
12 petition alleging a violation of the child's conditions of
13 community control or aftercare supervision, the court may
14 order the child to submit to random testing for the purpose of
15 detecting and monitoring the use of alcohol or controlled
16 substances.

17 a. A restrictiveness level classification scale for
18 levels of supervision shall be provided by the department,
19 taking into account the child's needs and risks relative to
20 community control supervision requirements to reasonably
21 ensure the public safety. Community control programs for
22 children shall be supervised by the department or by any other
23 person or agency specifically authorized by the court. These
24 programs must include, but are not limited to, structured or
25 restricted activities as described in this subparagraph, and
26 shall be designed to encourage the child toward acceptable and
27 functional social behavior. If supervision or a program of
28 community service is ordered by the court, the duration of
29 such supervision or program must be consistent with any
30 treatment and rehabilitation needs identified for the child
31 and may not exceed the term for which sentence could be

1 imposed if the child were committed for the offense, except
2 that the duration of such supervision or program for an
3 offense that is a misdemeanor of the second degree, or is
4 equivalent to a misdemeanor of the second degree, may be for a
5 period not to exceed 6 months. When restitution is ordered by
6 the court, the amount of restitution may not exceed an amount
7 the child and the parent or guardian could reasonably be
8 expected to pay or make. A child who participates in any work
9 program under this part is considered an employee of the state
10 for purposes of liability, unless otherwise provided by law.

11 b. The court may conduct judicial review hearings for
12 a child placed on community control for the purpose of
13 fostering accountability to the judge and compliance with
14 other requirements, such as restitution and community service.
15 The court may allow early termination of community control for
16 a child who has substantially complied with the terms and
17 conditions of community control.

18 c. If the conditions of the community control program
19 or the aftercare program are violated, the agent supervising
20 the program as it relates to the child involved, or the state
21 attorney, may bring the child before the court on a petition
22 alleging a violation of the program. Any child who violates
23 the conditions of community control or aftercare must be
24 brought before the court if sanctions are sought. A child
25 taken into custody under s. 985.207 for violating the
26 conditions of community control or aftercare shall be held in
27 a consequence unit if such a unit is available. The child
28 shall be afforded a hearing within 24 hours after being taken
29 into custody to determine the existence of probable cause that
30 the child violated the conditions of community control or
31 aftercare. A consequence unit is a secure facility

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

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

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

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1 (III) Modify or continue the child's community control
2 program or aftercare program.

3 (IV) Revoke community control or aftercare and commit
4 the child to the department.

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

11 2. Commit the child to a licensed child-caring agency
12 willing to receive the child, but the court may not commit the
13 child to a jail or to a facility used primarily as a detention
14 center or facility or shelter.

15 3. Commit the child to the Department of Juvenile
16 Justice at a restrictiveness level defined in s.
17 985.03(46)~~(45)~~. Such commitment must be for the purpose of
18 exercising active control over the child, including, but not
19 limited to, custody, care, training, urine monitoring, and
20 treatment of the child and furlough of the child into the
21 community. Notwithstanding s. 743.07 and paragraph (d), and
22 except as provided in s. 985.31, the term of the commitment
23 must be until the child is discharged by the department or
24 until he or she reaches the age of 21.

25 4. Revoke or suspend the driver's license of the
26 child.

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

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

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

28 8. Commit the child to the Department of Juvenile
29 Justice for placement in a program or facility for serious or
30 habitual juvenile offenders in accordance with s. 985.31. Any
31 commitment of a child to a program or facility for serious or

1 habitual juvenile offenders must be for an indeterminate
2 period of time, but the time may not exceed the maximum term
3 of imprisonment that an adult may serve for the same offense.
4 The court may retain jurisdiction over such child until the
5 child reaches the age of 21, specifically for the purpose of
6 the child completing the program.

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

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

28 (2) Following a delinquency adjudicatory hearing
29 pursuant to s. 985.228 and a delinquency disposition hearing
30 pursuant to s. 985.23 which results in a commitment
31 determination, the court shall, on its own or upon request by

1 the state or the department, determine whether the protection
2 of the public requires that the child be placed in a program
3 for serious or habitual juvenile offenders and whether the
4 particular needs of the child would be best served by a
5 program for serious or habitual juvenile offenders as provided
6 in s. 985.31. The determination shall be made pursuant to ss.
7 985.03(48)(47) and 985.23(3), and in accordance with s.
8 985.314.

9 (3) Following a delinquency adjudicatory hearing
10 pursuant to s. 985.228, the court may on its own or upon
11 request by the state or the department and subject to specific
12 appropriation, determine whether a juvenile sexual offender
13 placement is required for the protection of the public and
14 what would be the best approach to address the treatment needs
15 of the juvenile sexual offender. When the court determines
16 that a juvenile has no history of a recent comprehensive
17 assessment focused on sexually deviant behavior, the court
18 may, subject to specific appropriation, order the department
19 to conduct or arrange for an examination to determine whether
20 the juvenile sexual offender is amenable to community-based
21 treatment, unless the juvenile is subject to placement in a
22 moderate-risk, high-risk, or maximum-risk commitment program
23 pursuant to s. 985.314.

24 (a) The report of the examination shall include, at a
25 minimum, the following:

- 26 1. The juvenile sexual offender's account of the
27 incident and the official report of the investigation.
- 28 2. The juvenile sexual offender's offense history.
- 29 3. A multidisciplinary assessment of the sexually
30 deviant behaviors, including an assessment by a certified
31 psychologist, therapist, or psychiatrist.

1 4. An assessment of the juvenile sexual offender's
2 family, social, educational, and employment situation. The
3 report shall set forth the sources of the evaluator's
4 information.

5 (b) The report shall assess the juvenile sexual
6 offender's amenability to treatment and relative risk to the
7 victim and the community.

8 (c) The department shall provide a proposed plan to
9 the court that shall include, at a minimum:

10 1. The frequency and type of contact between the
11 offender and therapist.

12 2. The specific issues and behaviors to be addressed
13 in the treatment and description of planned treatment methods.

14 3. Monitoring plans, including any requirements
15 regarding living conditions, school attendance and
16 participation, lifestyle, and monitoring by family members,
17 legal guardians, or others.

18 4. Anticipated length of treatment.

19 5. Recommended crime-related prohibitions and curfew.

20 6. Reasonable restrictions on the contact between the
21 juvenile sexual offender and either the victim or alleged
22 victim.

23 (d) After receipt of the report on the proposed plan
24 of treatment, the court shall consider whether the community
25 and the offender will benefit from use of juvenile sexual
26 offender community-based treatment alternative disposition and
27 consider the opinion of the victim or the victim's family as
28 to whether the offender should receive a community-based
29 treatment alternative disposition under this subsection.

30 (e) If the court determines that this juvenile sexual
31 offender community-based treatment alternative is appropriate,

1 the court may place the offender on community supervision for
2 up to 3 years. As a condition of community treatment and
3 supervision, the court may order the offender to:

4 1. Undergo available outpatient juvenile sexual
5 offender treatment for up to 3 years. A program or provider
6 may not be used for such treatment unless it has an
7 appropriate program designed for sexual offender treatment.
8 The department shall not change the treatment provider without
9 first notifying the state attorney's office.

10 2. Remain within described geographical boundaries and
11 notify the court or the department counselor prior to any
12 change in the offender's address, educational program, or
13 employment.

14 3. Comply with all requirements of the treatment plan.

15 (f) The juvenile sexual offender treatment provider
16 shall submit quarterly reports on the respondent's progress in
17 treatment to the court and the parties to the proceedings.
18 The juvenile sexual offender reports shall reference the
19 treatment plan and include, at a minimum, the following:

20 1. Dates of attendance.

21 2. The juvenile sexual offender's compliance with the
22 requirements of treatment.

23 3. A description of the treatment activities.

24 4. The sexual offender's relative progress in
25 treatment.

26 5. The offender's family support of the treatment
27 objectives.

28 6. Any other material specified by the court at the
29 time of the disposition.

30 (g) At the disposition hearing, the court may set case
31 review hearings as the court considers appropriate.

1 (h) If the juvenile sexual offender violates any
2 condition of the disposition or the court finds that the
3 juvenile sexual offender is failing to make satisfactory
4 progress in treatment, the court may revoke the
5 community-based treatment alternative and order commitment to
6 the department pursuant to subsection (1).

7 (i) If the court determines that the juvenile sexual
8 offender is not amenable to community-based treatment, the
9 court shall proceed with a juvenile sexual offender
10 disposition hearing pursuant to subsection (1).

11 Section 2. Section 985.314, Florida Statutes, is
12 amended to read:

13 985.314 Commitment programs for juvenile felony
14 offenders.--

15 (1) Unless otherwise provided in subsection (3)
16 ~~Notwithstanding any other law and regardless of the child's~~
17 ~~age~~, a child who is adjudicated delinquent, or for whom
18 adjudication is withheld, for an act classified as that would
19 ~~be a felony if committed by an adult~~, shall be committed to:

20 (a) A boot camp program under s. 985.309 if the child
21 has participated in an early delinquency intervention program
22 as provided in s. 985.305.

23 (b) A program for serious or habitual juvenile
24 offenders under s. 985.31 or an intensive residential
25 treatment program for offenders less than 13 years of age
26 under s. 985.311, if the child has participated in an early
27 delinquency intervention program and has completed a boot camp
28 program.

29 (c) A maximum-risk residential program, if the child
30 has participated in an early delinquency intervention program,
31 has completed a boot camp program, and has completed a program

1 for serious or habitual juvenile offenders or an intensive
2 residential treatment program for offenders less than 13 years
3 of age. The commitment of a child to a maximum-risk
4 residential program must be for an indeterminate period, but
5 may not exceed the maximum term of imprisonment that an adult
6 may serve for the same offense.

7 (2) In committing a child to the appropriate program,
8 the court may consider an equivalent program of similar
9 intensity as being comparable to a program required under
10 subsection (1).

11 (3) Notwithstanding s. 985.23(3)(b) and (c), a court
12 shall order a juvenile who is adjudicated delinquent, or for
13 whom adjudication is withheld, into a commitment program
14 subject to the following minimum restrictiveness level
15 criteria:

16 (a) If a child is before the court for disposition of
17 a felony and the child has previously received adjudications
18 of delinquency, or adjudications of delinquency have been
19 withheld, for three acts classified as felonies or six acts
20 classified as misdemeanor or six acts in any combination
21 classified as felonies or misdemeanors, each of which occurred
22 at least 45 days apart, the juvenile shall be committed to the
23 department at a restrictiveness level as follows:

24 1. For a child 12 years of age or older but less than
25 14 years of age, the child must be placed in a commitment
26 program at a restrictiveness level of not less than "low-risk
27 residential" as defined in s. 985.03(46)(b).

28 2. For a child 14 years of age or older, the child
29 must be placed in a commitment program at a restrictiveness
30 level of not less than "moderate-risk residential" as defined
31 in s. 985.03(46)(c).

1 (b) Notwithstanding paragraph (a), if a juvenile is
2 before the court for disposition of a felony that involves the
3 use or threatened use of a firearm and the child has
4 previously received adjudications of delinquency, or
5 adjudications of delinquency have been withheld, for two acts
6 classified as felonies, each of which resulted from separate
7 criminal episodes, the juvenile shall be committed to the
8 department at a restrictiveness level as follows:

9 1. For a child 12 years of age or older but less than
10 14 years of age, child must be placed in a commitment program
11 at a restrictiveness level of not less than "moderate-risk
12 residential" as defined in s. 985.03(46)(c).

13 2. For a child 14 years of age or older, the child
14 must be placed in a commitment program at a restrictiveness
15 level of not less than "high-risk residential" as defined in
16 s. 985.03(46)(d).

17 3. For a child 16 years of age or older who has
18 previously been committed to a restrictiveness level of
19 "low-risk residential" or higher, the child must be placed in
20 a commitment program at a restrictiveness level of not less
21 than "maximum-risk residential" as defined in s.
22 985.03(46)(e).

23 (c) A court may order a juvenile into a commitment
24 program below the minimum restrictiveness levels provided in
25 this subsection if the court provides, on the record or in
26 writing, clear and convincing reasons which establish good
27 cause for such a departure.

28 (4) This section shall not apply to juveniles
29 transferred to adult court, where the court is required to
30 impose adult sanctions.

31 Section 3. This act shall take effect October 1, 1999.

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LEGISLATIVE SUMMARY

Specifies criteria for the court-ordered commitment of juvenile felony offenders to residential commitment programs of the Department of Juvenile Justice at the various restrictiveness levels, based on whether the felony involved the use or threatened use of a firearm and on the child's age and record of previous offenses and commitments. Provides exceptions for good cause or when the juvenile is to be prosecuted as an adult.