

By Senator Fasano

11-1428-03

1                                   A bill to be entitled  
2           An act relating to juvenile sentencing;  
3           amending s. 985.231, F.S.; authorizing a trial  
4           judge to sentence a delinquent child to a  
5           specific commitment program or facility within  
6           the Department of Juvenile Justice; providing  
7           an effective date.

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

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11           Section 1. Paragraph (a) of subsection (1) of section  
12 985.231, Florida Statutes, is amended to read:

13           985.231 Powers of disposition in delinquency cases.--

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

18           1. Place the child in a probation program or a  
19 postcommitment probation program under the supervision of an  
20 authorized agent of the Department of Juvenile Justice or of  
21 any other person or agency specifically authorized and  
22 appointed by the court, whether in the child's own home, in  
23 the home of a relative of the child, or in some other suitable  
24 place under such reasonable conditions as the court may  
25 direct. A probation program for an adjudicated delinquent  
26 child must include a penalty component such as restitution in  
27 money or in kind, community service, a curfew, revocation or  
28 suspension of the driver's license of the child, or other  
29 nonresidential punishment appropriate to the offense and must  
30 also include a rehabilitative program component such as a  
31 requirement of participation in substance abuse treatment or

1 | in school or other educational program. If the child is  
2 | attending or is eligible to attend public school and the court  
3 | finds that the victim or a sibling of the victim in the case  
4 | is attending or may attend the same school as the child, the  
5 | court placement order shall include a finding pursuant to the  
6 | proceedings described in s. 985.23(1)(d). Upon the  
7 | recommendation of the department at the time of disposition,  
8 | or subsequent to disposition pursuant to the filing of a  
9 | petition alleging a violation of the child's conditions of  
10 | postcommitment probation, the court may order the child to  
11 | submit to random testing for the purpose of detecting and  
12 | monitoring the use of alcohol or controlled substances.

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

1 period not to exceed 6 months. When restitution is ordered by  
2 the court, the amount of restitution may not exceed an amount  
3 the child and the parent or guardian could reasonably be  
4 expected to pay or make. A child who participates in any work  
5 program under this part is considered an employee of the state  
6 for purposes of liability, unless otherwise provided by law.

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

14       c. If the conditions of the probation program or the  
15 postcommitment probation program are violated, the department  
16 or the state attorney may bring the child before the court on  
17 a petition alleging a violation of the program. Any child who  
18 violates the conditions of probation or postcommitment  
19 probation must be brought before the court if sanctions are  
20 sought. A child taken into custody under s. 985.207 for  
21 violating the conditions of probation or postcommitment  
22 probation shall be held in a consequence unit if such a unit  
23 is available. The child shall be afforded a hearing within 24  
24 hours after being taken into custody to determine the  
25 existence of probable cause that the child violated the  
26 conditions of probation or postcommitment probation. A  
27 consequence unit is a secure facility specifically designated  
28 by the department for children who are taken into custody  
29 under s. 985.207 for violating probation or postcommitment  
30 probation, or who have been found by the court to have  
31 violated the conditions of probation or postcommitment

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

20 (I) Place the child in a consequence unit in that  
21 judicial circuit, if available, for up to 5 days for a first  
22 violation, and up to 15 days for a second or subsequent  
23 violation.

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

27 (III) Modify or continue the child's probation program  
28 or postcommitment probation program.

29 (IV) Revoke probation or postcommitment probation and  
30 commit the child to the department.

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1           d. Notwithstanding s. 743.07 and paragraph (d), and  
2 except as provided in s. 985.31, the term of any order placing  
3 a child in a probation program must be until the child's 19th  
4 birthday unless he or she is released by the court, on the  
5 motion of an interested party or on its own motion.

6           2. Commit the child to a licensed child-caring agency  
7 willing to receive the child, but the court may not commit the  
8 child to a jail or to a facility used primarily as a detention  
9 center or facility or shelter.

10           3. Commit the child to the Department of Juvenile  
11 Justice at a residential commitment level defined in s.  
12 985.03. The court may in its discretion specify a program or  
13 facility within the commitment level to which the child has  
14 been ordered.Such commitment must be for the purpose of  
15 exercising active control over the child, including, but not  
16 limited to, custody, care, training, urine monitoring, and  
17 treatment of the child and release of the child into the  
18 community in a postcommitment nonresidential conditional  
19 release program. If the child is eligible to attend public  
20 school following residential commitment and the court finds  
21 that the victim or a sibling of the victim in the case is or  
22 may be attending the same school as the child, the commitment  
23 order shall include a finding pursuant to the proceedings  
24 described in s. 985.23(1)(d). If the child is not successful  
25 in the conditional release program, the department may use the  
26 transfer procedure under s. 985.404. Notwithstanding s. 743.07  
27 and paragraph (d), and except as provided in s. 985.31, the  
28 term of the commitment must be until the child is discharged  
29 by the department or until he or 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 probation program to be implemented  
6 by the Department of Juvenile Justice, or, in the case of a  
7 committed child, as part of the community-based sanctions  
8 ordered by the court at the disposition hearing or before the  
9 child's release from commitment, order the child to make  
10 restitution in money, through a promissory note cosigned by  
11 the child's parent or guardian, or in kind for any damage or  
12 loss caused by the child's offense in a reasonable amount or  
13 manner to be determined by the court. The clerk of the circuit  
14 court shall be the receiving and dispensing agent. In such  
15 case, the court shall order the child or the child's parent or  
16 guardian to pay to the office of the clerk of the circuit  
17 court an amount not to exceed the actual cost incurred by the  
18 clerk as a result of receiving and dispensing restitution  
19 payments. The clerk shall notify the court if restitution is  
20 not made, and the court shall take any further action that is  
21 necessary against the child or the child's parent or guardian.  
22 A finding by the court, after a hearing, that the parent or  
23 guardian has made diligent and good faith efforts to prevent  
24 the child from engaging in delinquent acts absolves the parent  
25 or guardian of liability for restitution under this  
26 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 probation 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.

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Section 2. This act shall take effect upon becoming a law.

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SENATE SUMMARY

Authorizes a trial judge to sentence a delinquent child to a specific commitment program or facility within the Department of Juvenile Justice.