

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Barreiro offered the following:

Amendment (with title amendment)

Between line(s) 675 and 676, insert:

Section 12. Paragraph (a) of subsection (1) of section 985.231, Florida Statutes, is amended, and paragraph (c) of subsection (1) and paragraphs (h) and (i) of subsection (3) of said section are reenacted, to read:

985.231 Powers of disposition in delinquency cases.--

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

1. Place the child in a probation program or a postcommitment probation program under the supervision of an authorized agent of the Department of Juvenile Justice or of any other person or agency specifically authorized and appointed by

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28 the court, whether in the child's own home, in the home of a
29 relative of the child, or in some other suitable place under
30 such reasonable conditions as the court may direct. A probation
31 program for an adjudicated delinquent child must include a
32 penalty component such as restitution in money or in kind,
33 community service, a curfew, revocation or suspension of the
34 driver's license of the child, or other nonresidential
35 punishment appropriate to the offense and must also include a
36 rehabilitative program component such as a requirement of
37 participation in substance abuse treatment or in school or other
38 educational program. If the child is attending or is eligible to
39 attend public school and the court finds that the victim or a
40 sibling of the victim in the case is attending or may attend the
41 same school as the child, the court placement order shall
42 include a finding pursuant to the proceedings described in s.
43 985.23(1)(d). Upon the recommendation of the department at the
44 time of disposition, or subsequent to disposition pursuant to
45 the filing of a petition alleging a violation of the child's
46 conditions of postcommitment probation, the court may order the
47 child to submit to random testing for the purpose of detecting
48 and monitoring the use of alcohol or controlled substances.

49 a. A restrictiveness level classification scale for levels
50 of supervision shall be provided by the department, taking into
51 account the child's needs and risks relative to probation
52 supervision requirements to reasonably ensure the public safety.
53 Probation programs for children shall be supervised by the
54 department or by any other person or agency specifically
55 authorized by the court. These programs must include, but are
56 not limited to, structured or restricted activities as described

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57 in this subparagraph, and shall be designed to encourage the
58 child toward acceptable and functional social behavior. If
59 supervision or a program of community service is ordered by the
60 court, the duration of such supervision or program must be
61 consistent with any treatment and rehabilitation needs
62 identified for the child and may not exceed the term for which
63 sentence could be imposed if the child were committed for the
64 offense, except that the duration of such supervision or program
65 for an offense that is a misdemeanor of the second degree, or is
66 equivalent to a misdemeanor of the second degree, may be for a
67 period not to exceed 6 months. When restitution is ordered by
68 the court, the amount of restitution may not exceed an amount
69 the child and the parent or guardian could reasonably be
70 expected to pay or make. A child who participates in any work
71 program under this part is considered an employee of the state
72 for purposes of liability, unless otherwise provided by law.

73 b. The court may conduct judicial review hearings for a
74 child placed on probation for the purpose of fostering
75 accountability to the judge and compliance with other
76 requirements, such as restitution and community service. The
77 court may allow early termination of probation for a child who
78 has substantially complied with the terms and conditions of
79 probation.

80 c. If the conditions of the probation program or the
81 postcommitment probation program are violated, the department or
82 the state attorney may bring the child before the court on a
83 petition alleging a violation of the program. Any child who
84 violates the conditions of probation or postcommitment probation
85 must be brought before the court if sanctions are sought. A

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86 child taken into custody under s. 985.207 for violating the
87 conditions of probation or postcommitment probation shall be
88 held in a consequence unit if such a unit is available. The
89 child shall be afforded a hearing within 24 hours after being
90 taken into custody to determine the existence of probable cause
91 that the child violated the conditions of probation or
92 postcommitment probation. A consequence unit is a secure
93 facility specifically designated by the department for children
94 who are taken into custody under s. 985.207 for violating
95 probation or postcommitment probation, or who have been found by
96 the court to have violated the conditions of probation or
97 postcommitment probation. If the violation involves a new charge
98 of delinquency, the child may be detained under s. 985.215 in a
99 facility other than a consequence unit. If the child is not
100 eligible for detention for the new charge of delinquency, the
101 child may be held in the consequence unit pending a hearing and
102 is subject to the time limitations specified in s. 985.215. If
103 the child denies violating the conditions of probation or
104 postcommitment probation, the court shall appoint counsel to
105 represent the child at the child's request. Upon the child's
106 admission, or if the court finds after a hearing that the child
107 has violated the conditions of probation or postcommitment
108 probation, the court shall enter an order revoking, modifying,
109 or continuing probation or postcommitment probation. In each
110 such case, the court shall enter a new disposition order and, in
111 addition to the sanctions set forth in this paragraph, may
112 impose any sanction the court could have imposed at the original
113 disposition hearing. If the child is found to have violated the

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114 conditions of probation or postcommitment probation, the court
115 may:

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

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

122 (III) Modify or continue the child's probation program or
123 postcommitment probation program.

124 (IV) Revoke probation or postcommitment probation and
125 commit the child to the department.

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

131 2. Commit the child to a licensed child-caring agency
132 willing to receive the child, but the court may not commit the
133 child to a jail or to a facility used primarily as a detention
134 center or facility or shelter.

135 3. Commit the child to the Department of Juvenile Justice
136 at a residential commitment level defined in s. 985.03. The
137 court may, in its discretion, specify a program or facility
138 within the commitment level to which the child has been ordered.
139 A child ordered committed into a specific low-risk residential
140 program or facility may not be held in secure detention for more
141 than 5 days after the order of commitment, not including
142 Saturdays, Sundays, and legal holidays, while awaiting

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143 placement. A child ordered committed to a specific moderate-risk
144 residential program or facility may not be held in secure
145 detention for more than 15 days after the order of commitment,
146 not including Saturdays, Sundays, and legal holidays, while
147 awaiting placement. A child awaiting placement into a specific
148 low-risk or moderate-risk residential program or facility must
149 meet the detention admission criteria provided in s. 985.215. A
150 child ordered committed into a specific high-risk residential or
151 maximum-risk residential program or facility shall be held in
152 secure detention until the placement is accomplished. For a
153 child ordered committed to a high-risk residential or maximum-
154 risk residential program or facility, the department may notify
155 the dispositional judge of alternative placements of the same
156 risk level, as space becomes available, which could be
157 accomplished prior to entry of the child into the court-ordered
158 program or facility. With respect to any court-specified
159 placement, the court may not select a program or facility that
160 is not under contract with the department. If the court finds
161 that the planned vacancies at the program or facility specified
162 by the court are insufficient to allow for the placement of the
163 child within 45 days after the commitment order, the court must
164 select a program or facility of the same commitment risk level
165 from at least three alternative placements provided by the
166 department. Such commitment must be for the purpose of
167 exercising active control over the child, including, but not
168 limited to, custody, care, training, urine monitoring, and
169 treatment of the child and release of the child into the
170 community in a postcommitment nonresidential conditional release
171 program. If the child is eligible to attend public school

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172 following residential commitment and the court finds that the
173 victim or a sibling of the victim in the case is or may be
174 attending the same school as the child, the commitment order
175 shall include a finding pursuant to the proceedings described in
176 s. 985.23(1)(d). If the child is not successful in the
177 conditional release program, the department may use the transfer
178 procedure under s. 985.404. Notwithstanding s. 743.07 and
179 paragraph (d), and except as provided in s. 985.31, the term of
180 the commitment must be until the child is discharged by the
181 department or until he or she reaches the age of 21.

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

183 5. Require the child and, if the court finds it
184 appropriate, the child's parent or guardian together with the
185 child, to render community service in a public service program.

186 6. As part of the probation program to be implemented by
187 the Department of Juvenile Justice, or, in the case of a
188 committed child, as part of the community-based sanctions
189 ordered by the court at the disposition hearing or before the
190 child's release from commitment, order the child to make
191 restitution in money, through a promissory note cosigned by the
192 child's parent or guardian, or in kind for any damage or loss
193 caused by the child's offense in a reasonable amount or manner
194 to be determined by the court. The clerk of the circuit court
195 shall be the receiving and dispensing agent. In such case, the
196 court shall order the child or the child's parent or guardian to
197 pay to the office of the clerk of the circuit court an amount
198 not to exceed the actual cost incurred by the clerk as a result
199 of receiving and dispensing restitution payments. The clerk
200 shall notify the court if restitution is not made, and the court

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201 shall take any further action that is necessary against the
202 child or the child's parent or guardian. A finding by the court,
203 after a hearing, that the parent or guardian has made diligent
204 and good faith efforts to prevent the child from engaging in
205 delinquent acts absolves the parent or guardian of liability for
206 restitution under this subparagraph.

207 7. Order the child and, if the court finds it appropriate,
208 the child's parent or guardian together with the child, to
209 participate in a community work project, either as an
210 alternative to monetary restitution or as part of the
211 rehabilitative or probation program.

212 8. Commit the child to the Department of Juvenile Justice
213 for placement in a program or facility for serious or habitual
214 juvenile offenders in accordance with s. 985.31. Any commitment
215 of a child to a program or facility for serious or habitual
216 juvenile offenders must be for an indeterminate period of time,
217 but the time may not exceed the maximum term of imprisonment
218 that an adult may serve for the same offense. The court may
219 retain jurisdiction over such child until the child reaches the
220 age of 21, specifically for the purpose of the child completing
221 the program.

222 9. In addition to the sanctions imposed on the child,
223 order the parent or guardian of the child to perform community
224 service if the court finds that the parent or guardian did not
225 make a diligent and good faith effort to prevent the child from
226 engaging in delinquent acts. The court may also order the parent
227 or guardian to make restitution in money or in kind for any
228 damage or loss caused by the child's offense. The court shall
229 determine a reasonable amount or manner of restitution, and

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230 payment shall be made to the clerk of the circuit court as
231 provided in subparagraph 6.

232 10. Subject to specific appropriation, commit the juvenile
233 sexual offender to the Department of Juvenile Justice for
234 placement in a program or facility for juvenile sexual offenders
235 in accordance with s. 985.308. Any commitment of a juvenile
236 sexual offender to a program or facility for juvenile sexual
237 offenders must be for an indeterminate period of time, but the
238 time may not exceed the maximum term of imprisonment that an
239 adult may serve for the same offense. The court may retain
240 jurisdiction over a juvenile sexual offender until the juvenile
241 sexual offender reaches the age of 21, specifically for the
242 purpose of completing the program.

243 (c) Any order made pursuant to paragraph (a) shall be in
244 writing as prepared by the clerk of court and may thereafter be
245 modified or set aside by the court.

246 (3) Following a delinquency adjudicatory hearing pursuant
247 to s. 985.228, the court may on its own or upon request by the
248 state or the department and subject to specific appropriation,
249 determine whether a juvenile sexual offender placement is
250 required for the protection of the public and what would be the
251 best approach to address the treatment needs of the juvenile
252 sexual offender. When the court determines that a juvenile has
253 no history of a recent comprehensive assessment focused on
254 sexually deviant behavior, the court may, subject to specific
255 appropriation, order the department to conduct or arrange for an
256 examination to determine whether the juvenile sexual offender is
257 amenable to community-based treatment.

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258 (h) If the juvenile sexual offender violates any condition
259 of the disposition or the court finds that the juvenile sexual
260 offender is failing to make satisfactory progress in treatment,
261 the court may revoke the community-based treatment alternative
262 and order commitment to the department pursuant to subsection
263 (1).

264 (i) If the court determines that the juvenile sexual
265 offender is not amenable to community-based treatment, the court
266 shall proceed with a juvenile sexual offender disposition
267 hearing pursuant to subsection (1).

268 Section 13. For the purpose of incorporating the amendment
269 to section 985.231, Florida Statutes, in references thereto,
270 paragraph (a) of subsection (4) of section 985.201, Florida
271 Statutes, is reenacted to read:

272 985.201 Jurisdiction.--

273 (4)(a) Notwithstanding ss. 743.07, 985.229, 985.23, and
274 985.231, and except as provided in ss. 985.31 and 985.313, when
275 the jurisdiction of any child who is alleged to have committed a
276 delinquent act or violation of law is obtained, the court shall
277 retain jurisdiction, unless relinquished by its order, until the
278 child reaches 19 years of age, with the same power over the
279 child that the court had prior to the child becoming an adult.

280 Section 14. For the purpose of incorporating the amendment
281 to section 985.231, Florida Statutes, in references thereto,
282 paragraph (b) of subsection (4) of section 985.233, Florida
283 Statutes, is reenacted to read:

284 985.233 Sentencing powers; procedures; alternatives for
285 juveniles prosecuted as adults.--

286 (4) SENTENCING ALTERNATIVES.--

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287 (b) *Sentencing to juvenile sanctions.*--For juveniles
288 transferred to adult court but who do not qualify for such
289 transfer pursuant to s. 985.226(2)(b) or s. 985.227(2)(a) or
290 (b), the court may impose juvenile sanctions under this
291 paragraph. If juvenile sentences are imposed, the court shall,
292 pursuant to this paragraph, adjudge the child to have committed
293 a delinquent act. Adjudication of delinquency shall not be
294 deemed a conviction, nor shall it operate to impose any of the
295 civil disabilities ordinarily resulting from a conviction. The
296 court shall impose an adult sanction or a juvenile sanction and
297 may not sentence the child to a combination of adult and
298 juvenile punishments. An adult sanction or a juvenile sanction
299 may include enforcement of an order of restitution or probation
300 previously ordered in any juvenile proceeding. However, if the
301 court imposes a juvenile sanction and the department determines
302 that the sanction is unsuitable for the child, the department
303 shall return custody of the child to the sentencing court for
304 further proceedings, including the imposition of adult
305 sanctions. Upon adjudicating a child delinquent under subsection
306 (1), the court may:

307 1. Place the child in a probation program under the
308 supervision of the department for an indeterminate period of
309 time until the child reaches the age of 19 years or sooner if
310 discharged by order of the court.

311 2. Commit the child to the department for treatment in an
312 appropriate program for children for an indeterminate period of
313 time until the child is 21 or sooner if discharged by the
314 department. The department shall notify the court of its intent
315 to discharge no later than 14 days prior to discharge. Failure

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316 of the court to timely respond to the department's notice shall
317 be considered approval for discharge.

318 3. Order disposition pursuant to s. 985.231 as an
319 alternative to youthful offender or adult sentencing if the
320 court determines not to impose youthful offender or adult
321 sanctions.

322
323 It is the intent of the Legislature that the criteria and
324 guidelines in this subsection are mandatory and that a
325 determination of disposition under this subsection is subject to
326 the right of the child to appellate review under s. 985.234.

327 Section 15. For the purpose of incorporating the amendment
328 to section 985.231, Florida Statutes, in references thereto,
329 paragraphs (e) and (k) of subsection (3) of section 985.31,
330 Florida Statutes, are reenacted to read:

331 985.31 Serious or habitual juvenile offender.--

332 (3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND
333 TREATMENT.--

334 (e) After a child has been adjudicated delinquent pursuant
335 to s. 985.228, the court shall determine whether the child meets
336 the criteria for a serious or habitual juvenile offender
337 pursuant to s. 985.03(48). If the court determines that the
338 child does not meet such criteria, the provisions of s.
339 985.231(1) shall apply.

340 (k) Any commitment of a child to the department for
341 placement in a serious or habitual juvenile offender program or
342 facility shall be for an indeterminate period of time, but the
343 time shall not exceed the maximum term of imprisonment which an
344 adult may serve for the same offense. Notwithstanding the

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345 provisions of ss. 743.07 and 985.231(1)(d), a serious or
346 habitual juvenile offender shall not be held under commitment
347 from a court pursuant to this section, s. 985.231, or s. 985.233
348 after becoming 21 years of age. This provision shall apply only
349 for the purpose of completing the serious or habitual juvenile
350 offender program pursuant to this chapter and shall be used
351 solely for the purpose of treatment.

352 Section 16. For the purpose of incorporating the amendment
353 to section 985.231, Florida Statutes, in references thereto,
354 paragraph (e) of subsection (3) of section 985.311, Florida
355 Statutes, is reenacted to read:

356 985.311 Intensive residential treatment program for
357 offenders less than 13 years of age.--

358 (3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND
359 TREATMENT.--

360 (e) After a child has been adjudicated delinquent pursuant
361 to s. 985.228(5), the court shall determine whether the child is
362 eligible for an intensive residential treatment program for
363 offenders less than 13 years of age pursuant to s. 985.03(7). If
364 the court determines that the child does not meet the criteria,
365 the provisions of s. 985.231(1) shall apply.

366
367 ===== T I T L E A M E N D M E N T =====

368 Remove line(s) 40, and insert:
369 providing for retroactive application; amending s. 985.231,
370 F.S.; authorizing a judge to sentence a delinquent child to a
371 specific commitment program or facility of the Department of
372 Juvenile Justice; specifying time limits to hold a child in
373 secure detention while awaiting placement into a specific

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374 program or facility ordered by the court; reenacting ss.
375 985.201(4)(a), 985.233(4)(b), 985.31(3)(e) and (k), and
376 985.311(3)(e), F.S., to incorporate by reference the amendment
377 to s. 985.231, F.S.; providing an