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1 A bill to be entitled

2 An act relating to sentencing juveniles; amending s.  
3 985.233, F.S.; providing that juveniles may be sentenced  
4 to juvenile sanctions or to a combination of juvenile and  
5 adult sanctions; directing the Department of Juvenile  
6 Justice to give the sentencing court a written report if  
7 it determines a juvenile sanction to be inappropriate for  
8 a child; providing a procedure for those instances when  
9 the Department of Juvenile Justice proposes to discharge  
10 the child from a juvenile probation, juvenile commitment,  
11 or juvenile postcommitment probation program before he or  
12 she becomes 21 years of age; providing additional  
13 procedures in circumstances where placement in a juvenile  
14 commitment program is a condition of sentence to a  
15 Department of Corrections adult probation program;  
16 requiring the Department of Juvenile Justice to notify the  
17 sentencing court of its intent to discharge the child no  
18 later than 30 days before discharge; directing the  
19 department to file such notice in writing with the clerk  
20 of the court; directing the department to give a copy of  
21 the notice to specified persons; providing that a proposed  
22 discharge will be construed as approved if the sentencing  
23 court or state attorney fails to object to the discharge;  
24 directing the sentencing court to consider the educational  
25 needs of the child; requiring the court to prepare  
26 findings as to the child's educational needs; authorizing  
27 the court to order that certain specified educational  
28 goals be met; reenacting ss. 985.225(3) and (4)(a),  
29 985.226 (1) and (4)(a), 985.227(2)(d) and (3)(a) and (c),

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30 and 985.31(3)(k), F.S., relating to sentencing of  
 31 juveniles pursuant to indictment, sentencing of juveniles  
 32 pursuant to waiver of jurisdiction, sentencing of  
 33 juveniles pursuant to direct file proceedings, and the  
 34 commitment of certain juvenile offenders, respectively,  
 35 for the purpose of incorporating the amendment to s.  
 36 985.233, F.S., in references thereto; providing an  
 37 effective date.

38

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

40

41 Section 1. Paragraph (b) of subsection (4) of section  
 42 985.233, Florida Statutes, is amended to read:

43 985.233 Sentencing powers; procedures; alternatives for  
 44 juveniles prosecuted as adults.--

45 (4) SENTENCING ALTERNATIVES.--

46 (b) *Sentencing to juvenile sanctions*.--For juveniles  
 47 transferred to adult court but who do not qualify for ~~such~~  
 48 transfer under ~~pursuant to~~ s. 985.226(2)(b) or s. 985.227(2)(a)  
 49 or (b), the court may impose juvenile sanctions under this  
 50 paragraph. If juvenile sentences are imposed, the court shall,  
 51 under ~~pursuant to~~ this paragraph, adjudge the child to have  
 52 committed a delinquent act. Adjudication of delinquency shall  
 53 not be deemed a conviction, nor shall it operate to impose any  
 54 of the civil disabilities ordinarily resulting from a  
 55 conviction. The court shall impose ~~an adult sanction or a~~  
 56 juvenile sanction or ~~and may not~~ sentence the child to a  
 57 combination of adult and juvenile sanctions ~~punishments~~. ~~An~~  
 58 ~~adult sanction or~~ A juvenile sanction, or a combination of adult

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59 and juvenile sanctions, may include enforcement of an order of  
 60 restitution or probation previously ordered in any juvenile  
 61 proceeding. However, if the court imposes a juvenile sanction  
 62 and the department determines that the sanction is inappropriate  
 63 ~~unsuitable~~ for the child, the department shall provide the  
 64 sentencing court with a written report outlining the basis for  
 65 its objections to the juvenile sanction and shall simultaneously  
 66 provide a copy to the state attorney and the child's defense  
 67 counsel. The department shall return custody of the child to the  
 68 sentencing court for further proceedings, including the  
 69 imposition of alternative juvenile sanctions, a combination of  
 70 adult and juvenile sanctions, or adult sanctions.

71 1. Upon adjudicating a child delinquent under subsection  
 72 (1), the court may:

73 a.1- Place the child in a probation program under the  
 74 supervision of the department for an indeterminate period of  
 75 time until the child reaches the age of 21 ~~19~~ years or sooner if  
 76 discharged by the department ~~order of the court~~. If, at any time  
 77 before the child becomes 21 years of age, the department  
 78 proposes to discharge the child from a probation program, the  
 79 department shall notify the sentencing court of its intent to  
 80 discharge the child no later than 30 days before discharge. The  
 81 department shall file a written notice of its proposal with the  
 82 clerk of the court and give a copy of the written notice to the  
 83 sentencing judge, the state attorney, and the child's defense  
 84 counsel at the time it files the notice with the clerk of the  
 85 court. Failure of the sentencing court or the state attorney to  
 86 object to the department's notice of discharge within the 30-day  
 87 time period shall be construed as approval of the proposed

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88 discharge. If there is no objection, the clerk of the court  
 89 shall note on the court file that the case is closed.

90 b.2. Commit the child to the department for treatment in  
 91 an appropriate program for children for an indeterminate period  
 92 of time until the child reaches the age of ~~is~~ 21 or sooner if  
 93 discharged by the department. If, at any time before the child  
 94 becomes 21 years of age, the department proposes to discharge  
 95 the child from a commitment or postcommitment probation program,  
 96 the department shall notify the sentencing court of its intent  
 97 to discharge the child no later than 30 ~~14~~ days before ~~prior to~~  
 98 discharge. The department shall file a written notice of its  
 99 proposal with the clerk of the court and give a copy of the  
 100 written notice to the sentencing judge, the state attorney, and  
 101 the child's defense counsel at the time it files the notice with  
 102 the clerk of the court. Failure of the sentencing court or the  
 103 state attorney to object within the 30-day time limit ~~timely~~  
 104 ~~respond~~ to the department's notice shall be considered approval  
 105 for discharge. If there is no objection, the clerk of the court  
 106 shall close the case.

107 c. Place the child on probation under the supervision of  
 108 the Department of Corrections and commit the child to the  
 109 department for treatment in an appropriate program for children  
 110 for an indeterminate period of time until the child reaches the  
 111 age of 21 years or sooner if discharged by the department. If,  
 112 at any time before the child becomes 21 years of age, the  
 113 department proposes to discharge the child from the commitment  
 114 program, the department shall notify the sentencing court of its  
 115 intent to discharge the child no later than 30 days before  
 116 discharge. The department shall file a written notice of its

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117 proposal with the clerk of the court and give a copy of the  
118 written notice to the sentencing judge, the state attorney, and  
119 the child's defense counsel at the time it files the notice with  
120 the clerk of the court. Failure of the sentencing court or the  
121 state attorney to object to the department's notice of discharge  
122 within the 30-day time period shall be construed as approval of  
123 the proposed discharge. However, the department may not  
124 discharge the child until the Department of Corrections meets  
125 with the child to explain the terms of probation.

126 ~~d.3-~~ Order disposition pursuant to s. 985.231 as an  
127 alternative to youthful offender or adult sentencing if the  
128 court determines not to impose youthful offender or adult  
129 sanctions.

130 2. Upon sentencing a child to juvenile sanctions or a  
131 combination of juvenile and adult sanctions under subparagraph  
132 1., the court shall consider the educational needs assessment  
133 conducted under s. 985.224(1) and (2) and make a finding of the  
134 child's educational status. The court's finding shall include,  
135 but is not limited to, the child's academic strengths and  
136 abilities and the child's unmet or special education needs. The  
137 court may order, as a condition of probation or commitment, that  
138 the child must attain an appropriate educational goal. The  
139 appropriate educational goals may include, but are not limited  
140 to:

- 141 a. Receiving a high school diploma or its equivalent.  
142 b. Successful completion of a literacy course.  
143 c. Successful completion of a vocational course.  
144 d. Successful completion of the child's current grade, if  
145 the child is enrolled in school.

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146 e. Enrollment in an apprenticeship or similar program.

147  
 148 It is the intent of the Legislature that the criteria and  
 149 guidelines in this subsection are mandatory and that a  
 150 determination of disposition under this subsection is subject to  
 151 the right of the child to appellate review under s. 985.234.

152 Section 2. For the purpose of incorporating the amendment  
 153 to section 985.233, Florida Statutes, in references thereto,  
 154 subsection (3) and paragraph (a) of subsection (4) of section  
 155 985.225, Florida Statutes, are reenacted to read:

156 985.225 Indictment of a juvenile.--

157 (3) If the child is found to have committed the offense  
 158 punishable by death or by life imprisonment, the child shall be  
 159 sentenced as an adult. If the juvenile is not found to have  
 160 committed the indictable offense but is found to have committed  
 161 a lesser included offense or any other offense for which he or  
 162 she was indicted as a part of the criminal episode, the court  
 163 may sentence pursuant to s. 985.233.

164 (4)(a) Once a child has been indicted pursuant to this  
 165 subsection and has been found to have committed any offense for  
 166 which he or she was indicted as a part of the criminal episode,  
 167 the child shall be handled thereafter in every respect as if an  
 168 adult for any subsequent violation of state law, unless the  
 169 court imposes juvenile sanctions under s. 985.233.

170 Section 3. For the purpose of incorporating the amendment  
 171 to section 985.233, Florida Statutes, in references thereto,  
 172 subsection (1) and paragraph (a) of subsection (4) of section  
 173 985.226, Florida Statutes, are reenacted to read:

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174 985.226 Criteria for waiver of juvenile court  
 175 jurisdiction; hearing on motion to transfer for prosecution as  
 176 an adult.--

177 (1) VOLUNTARY WAIVER.--The court shall transfer and  
 178 certify a child's criminal case for trial as an adult if the  
 179 child is alleged to have committed a violation of law and, prior  
 180 to the commencement of an adjudicatory hearing, the child,  
 181 joined by a parent or, in the absence of a parent, by the  
 182 guardian or guardian ad litem, demands in writing to be tried as  
 183 an adult. Once a child has been transferred for criminal  
 184 prosecution pursuant to a voluntary waiver hearing and has been  
 185 found to have committed the presenting offense or a lesser  
 186 included offense, the child shall be handled thereafter in every  
 187 respect as an adult for any subsequent violation of state law,  
 188 unless the court imposes juvenile sanctions under s.

189 985.233(4)(b).

190 (4) EFFECT OF ORDER WAIVING JURISDICTION.--

191 (a) Once a child has been transferred for criminal  
 192 prosecution pursuant to an involuntary waiver hearing and has  
 193 been found to have committed the presenting offense or a lesser  
 194 included offense, the child shall thereafter be handled in every  
 195 respect as an adult for any subsequent violation of state law,  
 196 unless the court imposes juvenile sanctions under s. 985.233.

197 Section 4. For the purpose of incorporating the amendment  
 198 to section 985.233, Florida Statutes, in references thereto,  
 199 paragraph (d) of subsection (2) and paragraphs (a) and (c) of  
 200 subsection (3) of section 985.227, Florida Statutes, are  
 201 reenacted to read:

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202 985.227 Prosecution of juveniles as adults by the direct  
 203 filing of an information in the criminal division of the circuit  
 204 court; discretionary criteria; mandatory criteria.--

205 (2) MANDATORY DIRECT FILE.--

206 (d)1. With respect to any child who was 16 or 17 years of  
 207 age at the time the alleged offense was committed, the state  
 208 attorney shall file an information if the child has been charged  
 209 with committing or attempting to commit an offense listed in s.  
 210 775.087(2)(a)1.a.-q., and, during the commission of or attempt  
 211 to commit the offense, the child:

212 a. Actually possessed a firearm or destructive device, as  
 213 those terms are defined in s. 790.001.

214 b. Discharged a firearm or destructive device, as  
 215 described in s. 775.087(2)(a)2.

216 c. Discharged a firearm or destructive device, as  
 217 described in s. 775.087(2)(a)3., and, as a result of the  
 218 discharge, death or great bodily harm was inflicted upon any  
 219 person.

220 2. Upon transfer, any child who is:

221 a. Charged pursuant to sub-subparagraph 1.a. and who has  
 222 been previously adjudicated or had adjudication withheld for a  
 223 forcible felony offense or any offense involving a firearm, or  
 224 who has been previously placed in a residential commitment  
 225 program, shall be subject to sentencing under s. 775.087(2)(a),  
 226 notwithstanding s. 985.233.

227 b. Charged pursuant to sub-subparagraph 1.b. or sub-  
 228 subparagraph 1.c., shall be subject to sentencing under s.  
 229 775.087(2)(a), notwithstanding s. 985.233.



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230 3. Upon transfer, any child who is charged pursuant to  
 231 this paragraph, but who does not meet the requirements specified  
 232 in subparagraph 2., shall be sentenced pursuant to s. 985.233;  
 233 however, if the court imposes a juvenile sanction, the court  
 234 must commit the child to a high-risk or maximum-risk juvenile  
 235 facility.

236 4. This paragraph shall not apply if the state attorney  
 237 has good cause to believe that exceptional circumstances exist  
 238 which preclude the just prosecution of the child in adult court.

239 5. The Department of Corrections shall make every  
 240 reasonable effort to ensure that any child 16 or 17 years of age  
 241 who is convicted and sentenced under this paragraph be  
 242 completely separated such that there is no physical contact with  
 243 adult offenders in the facility, to the extent that it is  
 244 consistent with chapter 958.

245 (3) EFFECT OF DIRECT FILE.--

246 (a) Once a child has been transferred for criminal  
 247 prosecution pursuant to an information and has been found to  
 248 have committed the presenting offense or a lesser included  
 249 offense, the child shall be handled thereafter in every respect  
 250 as if an adult for any subsequent violation of state law, unless  
 251 the court imposes juvenile sanctions under s. 985.233.

252 (c) When a child has been transferred for criminal  
 253 prosecution as an adult and has been found to have committed a  
 254 violation of state law, the disposition of the case may be made  
 255 under s. 985.233 and may include the enforcement of any  
 256 restitution ordered in any juvenile proceeding.

257 Section 5. For the purpose of incorporating the amendment  
 258 to section 985.233, Florida Statutes, in a reference thereto,

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259 paragraph (k) of subsection (3) of section 985.31, Florida  
 260 Statutes, is reenacted to read:

261 985.31 Serious or habitual juvenile offender.--

262 (3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND  
 263 TREATMENT.--

264 (k) Any commitment of a child to the department for  
 265 placement in a serious or habitual juvenile offender program or  
 266 facility shall be for an indeterminate period of time, but the  
 267 time shall not exceed the maximum term of imprisonment which an  
 268 adult may serve for the same offense. Notwithstanding the  
 269 provisions of ss. 743.07 and 985.231(1)(d), a serious or  
 270 habitual juvenile offender shall not be held under commitment  
 271 from a court pursuant to this section, s. 985.231, or s. 985.233  
 272 after becoming 21 years of age. This provision shall apply only  
 273 for the purpose of completing the serious or habitual juvenile  
 274 offender program pursuant to this chapter and shall be used  
 275 solely for the purpose of treatment.

276 Section 6. This act shall take effect July 1, 2004.