

By Senator Wilson

33-8B-05

1                                   A bill to be entitled

2           An act relating to sentencing juveniles;

3           amending s. 985.233, F.S.; authorizing the

4           court to sentence a juvenile as an adult using

5           a combination of juvenile and adult sanctions;

6           directing the court to sentence the juvenile to

7           any sentence authorized by ch. 948, F.S.;

8           requiring the juvenile to successfully complete

9           a juvenile residential commitment program;

10          authorizing the court, under specified

11          circumstances, to sanction the juvenile as if

12          the juvenile had violated an adult sanction of

13          community control or probation; reenacting s.

14          985.226(1), F.S., relating to the volunteer

15          waiver of juvenile court jurisdiction, to

16          incorporate the amendments made to s. 985.233,

17          F.S., in a reference thereto; providing an

18          effective date.

19

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

21

22           Section 1. Subsection (4) of section 985.233, Florida

23 Statutes, is amended to read:

24           985.233 Sentencing powers; procedures; alternatives

25 for juveniles prosecuted as adults.--

26           (4) SENTENCING ALTERNATIVES.--

27           (a) Sentencing to adult sanctions.--

28           1. ~~Cases prosecuted on indictment.~~ If the child is

29 found to have committed the offense punishable by death or

30 life imprisonment, the child shall be sentenced as an adult.

31 If the juvenile is not found to have committed the indictable

1 offense but is found to have committed a lesser included  
2 offense or any other offense for which he or she was indicted  
3 as a part of the criminal episode, the court may sentence as  
4 follows:

5 a. As an adult;

6 b. Under ~~Pursuant to~~ chapter 958; ~~or~~

7 c. As an adult under a combination of juvenile and  
8 adult sanctions; or

9 ~~d.e.~~ As a juvenile under ~~pursuant to~~ this section.

10 2. ~~Other cases.~~ If a child who has been transferred  
11 for criminal prosecution by ~~pursuant to~~ information or waiver  
12 of juvenile court jurisdiction is found to have committed a  
13 violation of state law or a lesser included offense for which  
14 he or she was charged as a part of the criminal episode, the  
15 court may sentence as follows:

16 a. As an adult;

17 b. Under ~~Pursuant to~~ chapter 958; or

18 c. As a juvenile under ~~pursuant to~~ this section.

19  
20 However, if the child is found to have committed a violation  
21 of s. 810.02(3)(a) or s. 812.13(2)(b) or (c), and was 17 years  
22 of age or older at the time the violation was committed or at  
23 the time the child was arrested for the violation, the court  
24 may additionally sentence the child as an adult under a  
25 combination of juvenile and adult sanctions.

26 3. Notwithstanding any other provision to the  
27 contrary, if the state attorney is required to file a motion  
28 to transfer and certify the juvenile for prosecution as an  
29 adult under ~~pursuant to~~ s. 985.226(2)(b) and that motion is  
30 granted, or if the state attorney is required to file an  
31

1 information ~~under pursuant to~~ s. 985.227(2)(a) or (b), the  
2 court may sentence as follows:

3 a. As an adult; or

4 b. As an adult under a combination of juvenile and  
5 adult sanctions. ~~must impose adult sanctions.~~

6 4. Any sentence imposing adult sanctions is presumed  
7 appropriate, and the court is not required to set forth  
8 specific findings or enumerate the criteria in this subsection  
9 as any basis for its decision to impose adult sanctions.

10 5. When a child has been transferred for criminal  
11 prosecution as an adult and has been found to have committed a  
12 violation of state law, the disposition of the case may  
13 include the enforcement of any restitution ordered in any  
14 juvenile proceeding.

15 6. If the court imposes a combination of juvenile and  
16 adult sanctions, the court shall sentence the juvenile to any  
17 sentence authorized by chapter 948 with a special condition  
18 that the juvenile successfully complete a residential  
19 commitment program for juveniles. The court may sanction the  
20 juvenile as if the juvenile had violated an adult sanction of  
21 community control or probation if the juvenile violates any  
22 rule of the residential commitment program.

23 (b) Sentencing to juvenile sanctions.--For juveniles  
24 transferred to adult court but who do not qualify for ~~a such~~  
25 transfer ~~under pursuant to~~ s. 985.226(2)(b) or s.  
26 985.227(2)(a) or (b), the court may impose juvenile sanctions  
27 under this paragraph. If juvenile sentences are imposed, the  
28 court shall, ~~under pursuant to~~ this paragraph, adjudge the  
29 child to have committed a delinquent act. Adjudication of  
30 delinquency shall not be deemed a conviction, nor shall it  
31 operate to impose any of the civil disabilities ordinarily

1 resulting from a conviction. ~~The court shall impose an adult~~  
2 ~~sanction or a juvenile sanction and may not sentence the child~~  
3 ~~to a combination of adult and juvenile punishments.~~ An adult  
4 sanction or a juvenile sanction may include enforcement of an  
5 order of restitution or probation previously ordered in any  
6 juvenile proceeding. However, if the court imposes a juvenile  
7 sanction and the department determines that the sanction is  
8 unsuitable for the child, the department shall return custody  
9 of the child to the sentencing court for further proceedings,  
10 including the imposition of adult sanctions. Upon adjudicating  
11 a child delinquent under subsection (1), the court may:

12         1. Place the child in a probation program under the  
13 supervision of the department for an indeterminate period of  
14 time until the child reaches the age of 19 years or sooner if  
15 discharged by order of the court.

16         2. Commit the child to the department for treatment in  
17 an appropriate program for children for an indeterminate  
18 period of time until the child is 21 or sooner if discharged  
19 by the department. The department shall notify the court of  
20 its intent to discharge no later than 14 days before ~~prior to~~  
21 discharge. Failure of the court to timely respond to the  
22 department's notice shall be considered approval for  
23 discharge.

24         3. Order disposition under ~~pursuant to~~ s. 985.231 as  
25 an alternative to youthful offender or adult sentencing if the  
26 court determines not to impose youthful offender or adult  
27 sanctions.

28         (c) Imposition of adult sanctions upon failure of  
29 juvenile sanctions.--If a child proves not to be suitable for  
30 ~~to~~ a commitment program, ~~in~~ a juvenile probation program, or a  
31 treatment program under ~~the provisions of~~ paragraph (b), the

1 department shall provide the sentencing court with a written  
2 report outlining the basis for its objections to the juvenile  
3 sanction and shall simultaneously provide a copy of the report  
4 to the state attorney and the defense counsel. The department  
5 shall schedule a hearing within 30 days. Upon hearing, the  
6 court may revoke the previous adjudication, impose an  
7 adjudication of guilt, and impose any sentence that ~~which~~ it  
8 may lawfully impose, giving credit for all time spent by the  
9 child in the department. The court may also classify the child  
10 as a youthful offender under ~~pursuant to~~ s. 958.04, if  
11 appropriate. For purposes of this paragraph, a child may be  
12 found not suitable for ~~to~~ a commitment program, a community  
13 control program, or a treatment program under ~~the provisions~~  
14 ~~of~~ paragraph (b) if the child commits a new violation of law  
15 while under juvenile sanctions, if the child commits any other  
16 violation of the conditions of juvenile sanctions, or if the  
17 child's actions are otherwise determined by the court to  
18 demonstrate a failure of juvenile sanctions.

19 (d) Recoupment of cost of care or supervision in  
20 juvenile justice programs or facilities.--When the court  
21 orders any child to be supervised by or committed to the  
22 Department of Juvenile Justice for treatment in any of the  
23 department's programs for children, the court shall order the  
24 parents of the ~~such~~ child to pay fees as provided under s.  
25 985.2311.

26 (e) Further proceedings heard in adult court.--When a  
27 child is sentenced to juvenile sanctions, further proceedings  
28 involving those sanctions shall continue to be heard in the  
29 adult court.

30 (f) School attendance.--If the child is attending or  
31 is eligible to attend public school and the court finds that

1 | the victim or a sibling of the victim in the case is attending  
2 | or may attend the same school as the child, the court  
3 | placement order shall include a finding under ~~pursuant to~~ the  
4 | proceeding described in s. 985.23(1)(d).

5 |  
6 | It is the intent of the Legislature that the criteria and  
7 | guidelines for sentencing alternatives for juveniles in this  
8 | ~~subsection~~ are mandatory and that a determination of  
9 | disposition under this subsection is subject to the right of  
10 | the child to appellate review under s. 985.234.

11 |         Section 2. For the purpose of incorporating the  
12 | amendments made by this act to section 985.233, Florida  
13 | Statutes, in a reference thereto, subsection (1) of section  
14 | 985.226, Florida Statutes, is reenacted to read:

15 |             985.226 Criteria for waiver of juvenile court  
16 | jurisdiction; hearing on motion to transfer for prosecution as  
17 | an adult.--

18 |             (1) VOLUNTARY WAIVER.--The court shall transfer and  
19 | certify a child's criminal case for trial as an adult if the  
20 | child is alleged to have committed a violation of law and,  
21 | prior to the commencement of an adjudicatory hearing, the  
22 | child, joined by a parent or, in the absence of a parent, by  
23 | the guardian or guardian ad litem, demands in writing to be  
24 | tried as an adult. Once a child has been transferred for  
25 | criminal prosecution pursuant to a voluntary waiver hearing  
26 | and has been found to have committed the presenting offense or  
27 | a lesser included offense, the child shall be handled  
28 | thereafter in every respect as an adult for any subsequent  
29 | violation of state law, unless the court imposes juvenile  
30 | sanctions under s. 985.233(4)(b).

31 |         Section 3. This act shall take effect October 1, 2005.

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SENATE SUMMARY

Authorizes a court to sentence a juvenile as an adult using a combination of juvenile and adult sanctions. Directs the court to sentence the juvenile to any sentence authorized by ch. 948, F.S. Requires the juvenile to successfully complete a juvenile residential commitment program. Authorizes a court to sanction the juvenile as if the juvenile had violated community control or probation under specified circumstances.