

By Senator Wise

5-417-06

1 A bill to be entitled
2 An act relating to juvenile justice; repealing
3 s. 985.213(4), F.S., relating to the
4 requirement for the Department of Juvenile
5 Justice to submit a report to the Legislature
6 on alternatives to secure detention; amending
7 ss. 985.215 and 985.231, F.S.; providing that a
8 child may be held on home detention with or
9 without electronic monitoring; amending s.
10 985.2311, F.S.; providing for the costs of
11 supervision following disposition of a child;
12 amending s. 985.31, F.S.; deleting provisions
13 requiring an annual report by the department
14 concerning serious or habitual juvenile
15 offenders; amending s. 985.311, F.S.; deleting
16 provisions requiring an annual report on
17 intensive residential treatment for offenders
18 under 13 years of age; amending s. 985.3141,
19 F.S.; providing that the willful failure of a
20 child to return to a residential commitment
21 program constitutes escape, a third-degree
22 felony; repealing s. 985.317(5), F.S., relating
23 to a report by the department on literacy
24 programs for juvenile offenders; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Subsection (4) of section 985.213, Florida
30 Statutes, is repealed.

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1 Section 2. Subsection (2) and paragraph (b) of
2 subsection (10) of section 985.215, Florida Statutes, are
3 amended to read:

4 985.215 Detention.--

5 (2) Subject to the provisions of subsection (1), a
6 child taken into custody and placed into nonsecure or home
7 detention care or detained in secure detention care prior to a
8 detention hearing may continue to be detained by the court if:

9 (a) The child is alleged to be an escapee from a
10 residential commitment program, or an absconder from a
11 nonresidential commitment program, a probation program, or
12 conditional release supervision, or is alleged to have escaped
13 while being lawfully transported to or from a residential
14 commitment program.

15 (b) The child is wanted in another jurisdiction for an
16 offense which, if committed by an adult, would be a felony.

17 (c) The child is charged with a delinquent act or
18 violation of law and requests in writing through legal counsel
19 to be detained for protection from an imminent physical threat
20 to his or her personal safety.

21 (d) The child is charged with committing an offense of
22 domestic violence as defined in s. 741.28 and is detained as
23 provided in s. 985.213(2)(b)3.

24 (e) The child is charged with possession or
25 discharging a firearm on school property in violation of s.
26 790.115.

27 (f) The child is charged with a capital felony, a life
28 felony, a felony of the first degree, a felony of the second
29 degree that does not involve a violation of chapter 893, or a
30 felony of the third degree that is also a crime of violence,
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1 including any ~~such~~ offense involving the use or possession of
2 a firearm.

3 (g) The child is charged with any second degree or
4 third degree felony involving a violation of chapter 893 or
5 any third degree felony that is not also a crime of violence,
6 and the child:

7 1. Has a record of failure to appear at court hearings
8 after being properly notified in accordance with the Rules of
9 Juvenile Procedure;

10 2. Has a record of law violations prior to court
11 hearings;

12 3. Has already been detained or has been released and
13 is awaiting final disposition of the case;

14 4. Has a record of violent conduct resulting in
15 physical injury to others; or

16 5. Is found to have been in possession of a firearm.

17 (h) The child is alleged to have violated the
18 conditions of the child's probation or conditional release
19 supervision. However, a child detained under this paragraph
20 may be held only in a consequence unit as provided in s.
21 985.231(1)(a)1.c. If a consequence unit is not available, the
22 child shall be placed on home detention with or without
23 electronic monitoring.

24 (i) The child is detained on a judicial order for
25 failure to appear and has previously willfully failed to
26 appear, after proper notice, for an adjudicatory hearing on
27 the same case regardless of the results of the risk assessment
28 instrument. A child may be held in secure detention for up to
29 72 hours in advance of the next scheduled court hearing under
30 ~~pursuant to~~ this paragraph. The child's failure to keep the
31 clerk of court and defense counsel informed of a current and

1 | valid mailing address where the child will receive notice to
2 | appear at court proceedings does not provide an adequate
3 | ground for excusal of the child's nonappearance at the
4 | hearings.

5 | (j) The child is detained on a judicial order for
6 | failure to appear and has previously willfully failed to
7 | appear, after proper notice, at two or more court hearings of
8 | any nature on the same case regardless of the results of the
9 | risk assessment instrument. A child may be held in secure
10 | detention for up to 72 hours in advance of the next scheduled
11 | court hearing under ~~pursuant to~~ this paragraph. The child's
12 | failure to keep the clerk of court and defense counsel
13 | informed of a current and valid mailing address where the
14 | child will receive notice to appear at court proceedings does
15 | not provide an adequate ground for excusal of the child's
16 | nonappearance at the hearings.

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18 | A child who meets any of these criteria and who is ordered to
19 | be detained under ~~pursuant to~~ this subsection shall be given a
20 | hearing within 24 hours after being taken into custody. The
21 | purpose of the detention hearing is to determine the existence
22 | of probable cause that the child has committed the delinquent
23 | act or violation of law with which he or she is charged and
24 | the need for continued detention, except where the child is
25 | alleged to have absconded from a nonresidential commitment
26 | program in which case the court, at the detention hearing,
27 | shall order that the child be released from detention and
28 | returned to his or her nonresidential commitment program.
29 | Unless a child is detained under paragraph (d) or paragraph
30 | (e), the court shall use the results of the risk assessment
31 | performed by the juvenile probation officer and, based on the

1 criteria in this subsection, shall determine the need for
2 continued detention. A child placed into secure, nonsecure, or
3 home detention care may continue to be so detained by the
4 court under ~~pursuant to~~ this subsection. If the court orders a
5 placement more restrictive than indicated by the results of
6 the risk assessment instrument, the court shall state, in
7 writing, clear and convincing reasons for the such placement.
8 Except as provided in s. 790.22(8) or in subparagraph
9 (10)(a)2., paragraph (10)(b), paragraph (10)(c), or paragraph
10 (10)(d), when a child is placed into secure or nonsecure
11 detention care, or into a respite home or other placement
12 pursuant to a court order following a hearing, the court order
13 must include specific instructions that direct the release of
14 the child from the such placement no later than 5 p.m. on the
15 last day of the detention period specified in paragraph (5)(b)
16 or paragraph (5)(c), or subparagraph (10)(a)1., whichever is
17 applicable, unless the requirements of such applicable
18 provision have been met or an order of continuance has been
19 granted under ~~pursuant to~~ paragraph (5)(f).

20 (10)

21 (b) A child who is placed in home detention care,
22 nonsecure detention care, or home or nonsecure detention care
23 with or without electronic monitoring, while awaiting
24 placement in a minimum-risk, low-risk, or moderate-risk
25 program, may be held in secure detention care for 5 days, if
26 the child violates the conditions of the home detention care,
27 the nonsecure detention care, or the electronic monitoring
28 agreement. For any subsequent violation, the court may impose
29 an additional 5 days in secure detention care.

30 Section 3. Paragraph (a) of subsection (1) of section
31 985.231, Florida Statutes, is amended to read:

1 985.231 Powers of disposition in delinquency cases.--
2 (1)(a) The court that has jurisdiction of an
3 adjudicated delinquent child may, by an order stating the
4 facts upon which a determination of a sanction and
5 rehabilitative program was made at the disposition hearing:
6 1. Place the child in a probation program or a
7 postcommitment probation program under the supervision of an
8 authorized agent of the department or of any other person or
9 agency specifically authorized and appointed by the court,
10 whether in the child's own home, in the home of a relative of
11 the child, or in some other suitable place under such
12 reasonable conditions as the court may direct. A probation
13 program for an adjudicated delinquent child must include a
14 penalty component such as restitution in money or in kind,
15 community service, a curfew, revocation or suspension of the
16 driver's license of the child, or other nonresidential
17 punishment appropriate to the offense and must also include a
18 rehabilitative program component such as a requirement of
19 participation in substance abuse treatment or in school or
20 other educational program. If the child is attending or is
21 eligible to attend public school and the court finds that the
22 victim or a sibling of the victim in the case is attending or
23 may attend the same school as the child, the court placement
24 order shall include a finding under ~~pursuant to~~ the
25 proceedings described in s. 985.23(1)(d). Upon the
26 recommendation of the department at the time of disposition,
27 or subsequent to disposition pursuant to the filing of a
28 petition alleging a violation of the child's conditions of
29 postcommitment probation, the court may order the child to
30 submit to random testing for the purpose of detecting and
31 monitoring the use of alcohol or controlled substances.

1 a. A classification scale for levels of supervision
2 shall be provided by the department, taking into account the
3 child's needs and risks relative to probation supervision
4 requirements to reasonably ensure the public safety. Probation
5 programs for children shall be supervised by the department or
6 by any other person or agency specifically authorized by the
7 court. These programs must include, but are not limited to,
8 structured or restricted activities as described in this
9 subparagraph, and shall be designed to encourage the child
10 toward acceptable and functional social behavior. If
11 supervision or a program of community service is ordered by
12 the court, the duration of the ~~such~~ supervision or program
13 must be consistent with any treatment and rehabilitation needs
14 identified for the child and may not exceed the term for which
15 sentence could be imposed if the child were committed for the
16 offense, except that the duration of the ~~such~~ supervision or
17 program for an offense that is a misdemeanor of the second
18 degree, or is equivalent to a misdemeanor of the second
19 degree, may be for a period not to exceed 6 months. When
20 restitution is ordered by the court, the amount of restitution
21 may not exceed an amount the child and the parent or guardian
22 could reasonably be expected to pay or make. A child who
23 participates in any work program under this part is considered
24 an employee of the state for purposes of liability, unless
25 otherwise provided by law.

26 b. The court may conduct judicial review hearings for
27 a child placed on probation for the purpose of fostering
28 accountability to the judge and compliance with other
29 requirements, such as restitution and community service. The
30 court may allow early termination of probation for a child who
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1 | has substantially complied with the terms and conditions of
2 | probation.

3 | c. If the conditions of the probation program or the
4 | postcommitment probation program are violated, the department
5 | or the state attorney may bring the child before the court on
6 | a petition alleging a violation of the program. Any child who
7 | violates the conditions of probation or postcommitment
8 | probation must be brought before the court if sanctions are
9 | sought. A child taken into custody under s. 985.207 for
10 | violating the conditions of probation or postcommitment
11 | probation shall be held in a consequence unit if such a unit
12 | is available. The child shall be afforded a hearing within 24
13 | hours after being taken into custody to determine the
14 | existence of probable cause that the child violated the
15 | conditions of probation or postcommitment probation. A
16 | consequence unit is a secure facility specifically designated
17 | by the department for children who are taken into custody
18 | under s. 985.207 for violating probation or postcommitment
19 | probation, or who have been found by the court to have
20 | violated the conditions of probation or postcommitment
21 | probation. If the violation involves a new charge of
22 | delinquency, the child may be detained under s. 985.215 in a
23 | facility other than a consequence unit. If the child is not
24 | eligible for detention for the new charge of delinquency, the
25 | child may be held in the consequence unit pending a hearing
26 | and is subject to the time limitations specified in s.
27 | 985.215. If the child denies violating the conditions of
28 | probation or postcommitment probation, the court shall appoint
29 | counsel to represent the child at the child's request. Upon
30 | the child's admission, or if the court finds after a hearing
31 | that the child has violated the conditions of probation or

1 | postcommitment probation, the court shall enter an order
2 | revoking, modifying, or continuing probation or postcommitment
3 | probation. In each ~~such~~ case, the court shall enter a new
4 | disposition order and, in addition to the sanctions set forth
5 | in this paragraph, may impose any sanction the court could
6 | have imposed at the original disposition hearing. If the child
7 | is found to have violated the conditions of probation or
8 | postcommitment probation, the court may:

9 | (I) Place the child in a consequence unit in that
10 | judicial circuit, if available, for up to 5 days for a first
11 | violation, and up to 15 days for a second or subsequent
12 | violation.

13 | (II) Place the child on home detention with or without
14 | electronic monitoring. However, this sanction may be used only
15 | if a residential consequence unit is not available.

16 | (III) Modify or continue the child's probation program
17 | or postcommitment probation program.

18 | (IV) Revoke probation or postcommitment probation and
19 | commit the child to the department.

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

25 | 2. Commit the child to a licensed child-caring agency
26 | willing to receive the child, but the court may not commit the
27 | child to a jail or to a facility used primarily as a detention
28 | center or facility or shelter.

29 | 3. Commit the child to the department at a
30 | restrictiveness level defined in s. 985.03. The ~~Such~~
31 | commitment must be for the purpose of exercising active

1 control over the child, including, but not limited to,
2 custody, care, training, urine monitoring, and treatment of
3 the child and release of the child from residential commitment
4 into the community in a postcommitment nonresidential
5 conditional release program. If the child is eligible to
6 attend public school following commitment and the court finds
7 that the victim or a sibling of the victim in the case is or
8 may be attending the same school as the child, the commitment
9 order shall include a finding pursuant to the proceedings
10 described in s. 985.23(1)(d). If the child is not successful
11 in the conditional release program, the department may use the
12 transfer procedure under s. 985.404. Notwithstanding s. 743.07
13 and paragraph (d), and except as provided in s. 985.31, the
14 term of the commitment must be until the child is discharged
15 by the department or until he or she reaches the age of 21.

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

18 5. Require the child and, if the court finds it
19 appropriate, the child's parent or guardian together with the
20 child, to render community service in a public service
21 program.

22 6. As part of the probation program to be implemented
23 by the department, or, in the case of a committed child, as
24 part of the community-based sanctions ordered by the court at
25 the disposition hearing or before the child's release from
26 commitment, order the child to make restitution in money,
27 through a promissory note cosigned by the child's parent or
28 guardian, or in kind for any damage or loss caused by the
29 child's offense in a reasonable amount or manner to be
30 determined by the court. The clerk of the circuit court shall
31 be the receiving and dispensing agent. In such case, the court

1 shall order the child or the child's parent or guardian to pay
2 to the office of the clerk of the circuit court an amount not
3 to exceed the actual cost incurred by the clerk as a result of
4 receiving and dispensing restitution payments. The clerk shall
5 notify the court if restitution is not made, and the court
6 shall take any further action that is necessary against the
7 child or the child's parent or guardian. A finding by the
8 court, after a hearing, that the parent or guardian has made
9 diligent and good faith efforts to prevent the child from
10 engaging in delinquent acts absolves the parent or guardian of
11 liability for restitution under this subparagraph.

12 7. Order the child and, if the court finds it
13 appropriate, the child's parent or guardian together with the
14 child, to participate in a community work project, either as
15 an alternative to monetary restitution or as part of the
16 rehabilitative or probation program.

17 8. Commit the child to the department for placement in
18 a program or facility for serious or habitual juvenile
19 offenders in accordance with s. 985.31. Any commitment of a
20 child to a program or facility for serious or habitual
21 juvenile offenders must be for an indeterminate period of
22 time, but the time may not exceed the maximum term of
23 imprisonment that an adult may serve for the same offense. The
24 court may retain jurisdiction over the ~~such~~ child until the
25 child reaches the age of 21, specifically for the purpose of
26 the child completing the program.

27 9. In addition to the sanctions imposed on the child,
28 order the parent or guardian of the child to perform community
29 service if the court finds that the parent or guardian did not
30 make a diligent and good faith effort to prevent the child
31 from engaging in delinquent acts. The court may also order the

1 parent or guardian to make restitution in money or in kind for
2 any damage or loss caused by the child's offense. The court
3 shall determine a reasonable amount or manner of restitution,
4 and payment shall be made to the clerk of the circuit court as
5 provided in subparagraph 6.

6 10. Subject to specific appropriation, commit the
7 juvenile sexual offender to the department for placement in a
8 program or facility for juvenile sexual offenders in
9 accordance with s. 985.308. Any commitment of a juvenile
10 sexual offender to a program or facility for juvenile sexual
11 offenders must be for an indeterminate period of time, but the
12 time may not exceed the maximum term of imprisonment that an
13 adult may serve for the same offense. The court may retain
14 jurisdiction over a juvenile sexual offender until the
15 juvenile sexual offender reaches the age of 21, specifically
16 for the purpose of completing the program.

17 Section 4. Paragraph (a) of subsection (1) of section
18 985.2311, Florida Statutes, is amended to read:

19 985.2311 Cost of supervision; cost of care.--

20 (1) Except as provided in subsection (3) or subsection
21 (4):

22 (a) When any child is placed into home detention,
23 probation, or other supervision status with the department
24 following disposition, or is committed to the minimum-risk
25 nonresidential restrictiveness level, the court shall order
26 the parent of such child to pay to the department a fee for
27 the cost of the supervision of such child in the amount of \$1
28 per day for each day that the child is in such status.

29 Section 5. Paragraph (a) of subsection (1) of section
30 985.31, Florida Statutes, is amended to read:

31 985.31 Serious or habitual juvenile offender.--

1 (1) ASSESSMENT AND TREATMENT SERVICES.--Pursuant to
2 the provisions of this chapter and the establishment of
3 appropriate program guidelines and standards, contractual
4 instruments, which shall include safeguards of all
5 constitutional rights, shall be developed as follows:

6 (a) The department shall provide for:

7 1. The oversight of implementation of assessment and
8 treatment approaches.

9 2. The identification and prequalification of
10 appropriate individuals or not-for-profit organizations,
11 including minority individuals or organizations when possible,
12 to provide assessment and treatment services to serious or
13 habitual delinquent children.

14 3. The monitoring and evaluation of assessment and
15 treatment services for compliance with the provisions of this
16 chapter and all applicable rules and guidelines pursuant
17 thereto.

18 ~~4. The development of an annual report on the~~
19 ~~performance of assessment and treatment to be presented to the~~
20 ~~Governor, the Attorney General, the President of the Senate,~~
21 ~~the Speaker of the House of Representatives, and the Auditor~~
22 ~~General no later than January 1 of each year.~~

23 Section 6. Paragraph (a) of subsection (1) of section
24 985.311, Florida Statutes, is amended to read:

25 985.311 Intensive residential treatment program for
26 offenders less than 13 years of age.--

27 (1) ASSESSMENT AND TREATMENT SERVICES.--Pursuant to
28 the provisions of this chapter and the establishment of
29 appropriate program guidelines and standards, contractual
30 instruments, which shall include safeguards of all
31 constitutional rights, shall be developed for intensive

1 residential treatment programs for offenders less than 13
2 years of age as follows:

3 (a) The department shall provide for:

4 1. The oversight of implementation of assessment and
5 treatment approaches.

6 2. The identification and prequalification of
7 appropriate individuals or not-for-profit organizations,
8 including minority individuals or organizations when possible,
9 to provide assessment and treatment services to intensive
10 offenders less than 13 years of age.

11 3. The monitoring and evaluation of assessment and
12 treatment services for compliance with the provisions of this
13 chapter and all applicable rules and guidelines pursuant
14 thereto.

15 ~~4. The development of an annual report on the~~
16 ~~performance of assessment and treatment to be presented to the~~
17 ~~Governor, the Attorney General, the President of the Senate,~~
18 ~~the Speaker of the House of Representatives, the Auditor~~
19 ~~General, and the Office of Program Policy Analysis and~~
20 ~~Government Accountability no later than January 1 of each~~
21 ~~year.~~

22 Section 7. Section 985.3141, Florida Statutes, is
23 amended to read:

24 985.3141 Escapes from secure detention or residential
25 commitment facility.--An escape from:

26 (1) Any secure detention facility maintained for the
27 temporary detention of children, pending adjudication,
28 disposition, or placement;

29 (2) Any residential commitment facility described in
30 s. 985.03(46), maintained for the custody, treatment,
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1 | punishment, or rehabilitation of children found to have
2 | committed delinquent acts or violations of law; or
3 | (3) Lawful transportation to or from any ~~such~~ secure
4 | detention facility or residential commitment facility,
5 |
6 | constitutes escape within the intent and meaning of s. 944.40
7 | and is a felony of the third degree, punishable as provided in
8 | s. 775.082, s. 775.083, or s. 775.084. For purposes of this
9 | section, escape from a residential commitment facility
10 | includes the willful failure of a child to return to a
11 | residential commitment facility within the time authorized for
12 | a temporary release.

13 | Section 8. Subsection (5) of section 985.317, Florida
14 | Statutes, is repealed.

15 | Section 9. This act shall take effect July 1, 2006.

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18 | SENATE SUMMARY

19 | Repeals certain provisions relating to the requirement
20 | for the Department of Juvenile Justice to submit a report
21 | to the Legislature on alternatives to secure detention.
22 | Provides that a child may be held on home detention with
23 | or without electronic monitoring. Provides for costs of
24 | supervision following disposition of a child. Deletes
25 | provisions requiring an annual report by the department
26 | concerning serious or habitual juvenile offenders.
27 | Deletes provisions requiring an annual report on
28 | intensive residential treatment for offenders under 13
29 | years of age. Provides that the willful failure of a
30 | child to return to a residential commitment program
31 | constitutes escape, a third-degree felony. Repeals
 certain provisions relating to a report by the department
 on literacy programs for juvenile offenders.