

By Senator Wilson

33-45A-07

1 A bill to be entitled

2 An act relating to the sentencing of juveniles;

3 amending s. 985.565, F.S.; authorizing the

4 court to sentence a juvenile using juvenile

5 sanctions, adult sanctions, or a blend of

6 juvenile and adult sanctions; requiring the

7 Department of Juvenile Justice to file a

8 written report with the court if the department

9 believes the child's sanction is inappropriate;

10 providing that the court may place the child on

11 probation; requiring the department to notify

12 the court before it discharges a child from a

13 sanction; requiring the court to review the

14 child's educational needs-assessment and make

15 specific findings as to the child's educational

16 status; authorizing the court to order that the

17 child attain appropriate educational goals;

18 listing certain educationally appropriate

19 goals; reenacting s. 985.556(1), F.S., relating

20 to the voluntary waiver of juvenile court

21 jurisdiction, to incorporate the amendments

22 made to s. 985.565, F.S., in a reference

23 thereto; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Section 985.565, Florida Statutes, is

28 amended to read:

29 985.565 Sentencing powers; procedures; alternatives

30 and blended sanctions for juveniles prosecuted as adults;

31 educational attainment.--

1 (1) POWERS OF DISPOSITION.--

2 (a) A child who is found to have committed a violation
3 of law may, as an alternative to adult dispositions, be
4 committed to the department for treatment in an appropriate
5 program for children outside the adult correctional system or
6 be placed on juvenile probation.

7 (b) In determining whether to impose juvenile
8 sanctions, ~~instead of adult sanctions, or blended juvenile and~~
9 adult sanctions, the court shall consider the following
10 criteria:

11 1. The seriousness of the offense to the community and
12 whether the community would best be protected by juvenile or
13 adult sanctions.

14 2. Whether the offense was committed in an aggressive,
15 violent, premeditated, or willful manner.

16 3. Whether the offense was against persons or against
17 property, with greater weight being given to offenses against
18 persons, especially if personal injury resulted.

19 4. The sophistication and maturity of the offender.

20 5. The record and previous history of the offender,
21 including:

22 a. Previous contacts with the Department of
23 Corrections, the Department of Juvenile Justice, the former
24 Department of Health and Rehabilitative Services, the
25 Department of Children and Family Services, law enforcement
26 agencies, and the courts.

27 b. Prior periods of probation.

28 c. Prior adjudications that the offender committed a
29 delinquent act or violation of law as a child.

30 d. Prior commitments to the Department of Juvenile
31 Justice, the former Department of Health and Rehabilitative

1 Services, the Department of Children and Family Services, or
2 other facilities or institutions.

3 6. The prospects for adequate protection of the public
4 and the likelihood of deterrence and reasonable rehabilitation
5 of the offender if assigned to services and facilities of the
6 Department of Juvenile Justice.

7 7. Whether the Department of Juvenile Justice has
8 appropriate programs, facilities, and services immediately
9 available.

10 8. Whether adult sanctions would provide more
11 appropriate punishment and deterrence to further violations of
12 law than the imposition of juvenile sanctions.

13 (2) PRESENTENCE INVESTIGATION REPORT.--

14 (a) Upon a plea of guilty or no contest, the court may
15 refer the case to the department for investigation and
16 recommendation as to the suitability of its programs for the
17 child.

18 (b) Upon completion of the presentence investigation
19 report, it must be made available to the child's counsel and
20 the state attorney by the department prior to the sentencing
21 hearing.

22 (3) SENTENCING HEARING.--

23 (a) At the sentencing hearing the court shall receive
24 and consider a presentence investigation report by the
25 Department of Corrections regarding the suitability of the
26 offender for disposition as an adult or as a juvenile. The
27 presentence investigation report must include a comments
28 section prepared by the Department of Juvenile Justice, with
29 its recommendations as to disposition. This report requirement
30 may be waived by the offender.
31

1 (b) After considering the presentence investigation
2 report, the court shall give all parties present at the
3 hearing an opportunity to comment on the issue of sentence and
4 any proposed rehabilitative plan. Parties to the case include
5 the parent, guardian, or legal custodian of the offender; the
6 offender's counsel; the state attorney; representatives of the
7 Department of Corrections and the Department of Juvenile
8 Justice; the victim or victim's representative;
9 representatives of the school system; and the law enforcement
10 officers involved in the case.

11 (c) The court may receive and consider any other
12 relevant and material evidence, including other reports,
13 written or oral, in its effort to determine the action to be
14 taken with regard to the child, and may rely upon such
15 evidence to the extent of its probative value even if the
16 evidence would not be competent in an adjudicatory hearing.

17 (d) The court shall notify any victim of the offense
18 of the hearing and shall notify, or subpoena if appropriate,
19 the parents, guardians, or legal custodians of the child to
20 attend the disposition hearing.

21 (4) SENTENCING ALTERNATIVES.--

22 (a) Adult sanctions.--

23 1. Cases prosecuted on indictment.--If the child is
24 found to have committed the offense punishable by death or
25 life imprisonment, the child shall be sentenced as an adult.
26 If the juvenile is not found to have committed the indictable
27 offense but is found to have committed a lesser included
28 offense or any other offense for which he or she was indicted
29 as a part of the criminal episode, the court may sentence as
30 follows:

31 a. As an adult;

1 b. Under chapter 958; or
2 c. As a juvenile under this section.
3 2. Other cases.--If a child who has been transferred
4 for criminal prosecution pursuant to information or waiver of
5 juvenile court jurisdiction is found to have committed a
6 violation of state law or a lesser included offense for which
7 he or she was charged as a part of the criminal episode, the
8 court may sentence as follows:
9 a. As an adult;
10 b. Under chapter 958; or
11 c. As a juvenile under this section.
12 3. Notwithstanding any other provision to the
13 contrary, if the state attorney is required to file a motion
14 to transfer and certify the juvenile for prosecution as an
15 adult under s. 985.556(3) and that motion is granted, or if
16 the state attorney is required to file an information under s.
17 985.557(2)(a) or (b), the court must impose adult sanctions.
18 4. Any sentence imposing adult sanctions is presumed
19 appropriate, and the court is not required to set forth
20 specific findings or enumerate the criteria in this subsection
21 as any basis for its decision to impose adult sanctions.
22 5. When a child has been transferred for criminal
23 prosecution as an adult and has been found to have committed a
24 violation of state law, the disposition of the case may
25 include the enforcement of any restitution ordered in any
26 juvenile proceeding.
27 (b) Juvenile sanctions.--For juveniles transferred to
28 adult court but who do not qualify for such transfer under s.
29 985.556(3) or s. 985.557(2)(a) or (b), the court may impose
30 juvenile sanctions under this paragraph. If juvenile sanctions
31 ~~sentences~~ are imposed, the court shall, under this paragraph,

1 | adjudge the child to have committed a delinquent act.
2 | Adjudication of delinquency shall not be deemed a conviction,
3 | nor shall it operate to impose any of the civil disabilities
4 | ordinarily resulting from a conviction. The court shall impose
5 | ~~an adult sanction or a juvenile sanction or and may not~~
6 | sentence the child to blended juvenile and adult sanctions ~~a~~
7 | ~~combination of adult and juvenile punishments. An adult~~
8 | ~~sanction or~~ A juvenile sanction or a blended juvenile and
9 | adult sanction may include enforcement of an order of
10 | restitution or probation previously ordered in any juvenile
11 | proceeding. However, if the court imposes a juvenile sanction
12 | and the department determines that the sanction is
13 | inappropriate ~~unsuitable~~ for the child, the department shall
14 | provide the sentencing court with a written report outlining
15 | the basis for its objections to the juvenile sanction and
16 | shall simultaneously provide a copy to the state attorney and
17 | defense counsel. The department shall return custody of the
18 | child to the sentencing court for further proceedings,
19 | including the imposition of juvenile sanctions, blended
20 | juvenile and adult sanctions, alternative sanctions, or adult
21 | sanctions. Upon adjudicating a child delinquent under
22 | subsection (1), the court may sentence the child to juvenile
23 | probation, juvenile commitment, blended juvenile and adult
24 | sanctions, or to alternative sanctions under ss. 985.435,
25 | 985.437, 985.439, 985.441, 985.445, 985.45, and 985.455:
26 | 1. The court may place the child on ~~in a~~ probation
27 | ~~program~~ under the supervision of the department for an
28 | indeterminate period of time until the child reaches the age
29 | of 21 ~~19~~ years or sooner if discharged by order of the court.
30 | If at any time before the child's 21st birthday the department
31 | seeks to discharge the child from juvenile probation, the

1 department shall notify the sentencing court of its intent to
2 discharge the child no later than 30 days before the
3 discharge. The department shall file a written notice of its
4 proposal with the clerk of the court and give a copy of the
5 written notice to the sentencing judge, the state attorney,
6 and defense counsel at the time it files the notice with the
7 clerk of the court. Failure of the sentencing court or the
8 state attorney to object to the department's notice of
9 discharge within the 30-day period shall be construed as
10 approval of the proposed discharge. If there is no objection,
11 the clerk of the court shall close the case.

12 2. The court may commit the child to the department
13 for treatment in an appropriate program for children for an
14 indeterminate period of time until the child is 21 or sooner
15 if discharged by order of the court ~~department~~. If, at any
16 time prior to the child's 21st birthday, the department seeks
17 to discharge the child from a commitment or after-care
18 program, the department shall notify the sentencing court of
19 its intent to discharge the child no later than 30 ~~14~~ days
20 prior to discharge. The department shall file a written notice
21 of its proposal with the clerk of the court and give a copy of
22 the written notice to the sentencing judge, the state
23 attorney, and defense counsel at the time it files the notice
24 with the clerk of the court. Failure of the sentencing court
25 or the state attorney to object ~~timely respond~~ to the
26 department's notice of discharge within the 30-day period
27 shall be considered as approval for discharge. If there is no
28 objection, the clerk of the court shall close the case.

29 3. The court may commit the child to the department
30 for treatment in an appropriate program for children for an
31 indeterminate period of time until the child is 21 years of

1 age or sooner if discharged by order of the court, followed by
2 probation under the supervision of the Department of
3 Corrections. The department shall notify the sentencing court
4 of its intent to discharge the child no later than 30 days
5 before the discharge. The department must file a written
6 notice of its proposal with the clerk of the court and give a
7 copy of the notice to the sentencing judge, the Department of
8 Corrections, the state attorney, and defense counsel at the
9 time it files the notice with the clerk of the court. Failure
10 of the sentencing court or the state attorney to object to the
11 department's notice of discharge within the 30-day period
12 shall be construed as approval of the proposed discharge. An
13 order to discharge may not be entered until the Department of
14 Corrections has met with the child and explained the terms of
15 probation.

16 ~~4.3-~~ The court may order disposition under ss.
17 985.435, 985.437, 985.439, 985.441, 985.445, 985.45, and
18 985.455 as an alternative to youthful offender or adult
19 sentencing if the court determines not to impose youthful
20 offender or adult sanctions.

21 5. Upon sentencing a child under subsection (1) to
22 juvenile probation, juvenile commitment, blended juvenile and
23 adult sanctions, or alternative sanctions, the court shall
24 consider the educational needs-assessment conducted pursuant
25 to 985.18(1) and (2), the predisposition report, together with
26 any other report prepared pursuant to s. 985.43(1) and (2),
27 and any other relevant information. The court shall make a
28 finding as to the child's educational status, including, but
29 not limited to, the child's strengths, abilities, and unmet
30 and special educational needs. The court may enter an order,
31 as a condition of probation or commitment, that the child

1 attain an appropriate educational goal or goals. Examples of
2 appropriate educationally based goals are:
3 a. Attainment of a high school diploma or its
4 equivalent.
5 b. Successful completion of literacy courses.
6 c. Successful completion of vocational courses.
7 d. Attendance and successful completion of the child's
8 current grade if enrolled in school.
9 e. Enrollment in an apprenticeship or similar program.
10 (c) Adult sanctions upon failure of juvenile
11 sanctions.--If a child proves not to be suitable to a
12 commitment program, juvenile probation program, or treatment
13 program under paragraph (b), the department shall provide the
14 sentencing court with a written report outlining the basis for
15 its objections to the juvenile sanction and shall
16 simultaneously provide a copy of the report to the state
17 attorney and the defense counsel. The department shall
18 schedule a hearing within 30 days. Upon hearing, the court may
19 revoke the previous adjudication, impose an adjudication of
20 guilt, and impose any sentence which it may lawfully impose,
21 giving credit for all time spent by the child in the
22 department. The court may also classify the child as a
23 youthful offender under s. 958.04, if appropriate. For
24 purposes of this paragraph, a child may be found not suitable
25 to a commitment program, community control program, or
26 treatment program under paragraph (b) if the child commits a
27 new violation of law while under juvenile sanctions, if the
28 child commits any other violation of the conditions of
29 juvenile sanctions, or if the child's actions are otherwise
30 determined by the court to demonstrate a failure of juvenile
31 sanctions.

1 (d) Further proceedings heard in adult court.--When a
2 child is sentenced to juvenile sanctions, further proceedings
3 involving those sanctions shall continue to be heard in the
4 adult court.

5 (e) School attendance.--If the child is attending or
6 is eligible to attend public school and the court finds that
7 the victim or a sibling of the victim in the case is attending
8 or may attend the same school as the child, the court
9 placement order shall include a finding pursuant to the
10 proceeding described in s. 985.455(2), regardless of whether
11 adjudication is withheld.

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13 It is the intent of the Legislature that the criteria and
14 guidelines in this subsection are mandatory and that a
15 determination of disposition under this subsection is subject
16 to the right of the child to appellate review under s.
17 985.534.

18 Section 2. For the purpose of incorporating the
19 amendments made by this act to section 985.565, Florida
20 Statutes, in a reference thereto, subsection (1) of section
21 985.556, Florida Statutes, is reenacted to read:

22 985.556 Waiver of juvenile court jurisdiction;
23 hearing.--

24 (1) VOLUNTARY WAIVER.--The court shall transfer and
25 certify a child's criminal case for trial as an adult if the
26 child is alleged to have committed a violation of law and,
27 prior to the commencement of an adjudicatory hearing, the
28 child, joined by a parent or, in the absence of a parent, by
29 the guardian or guardian ad litem, demands in writing to be
30 tried as an adult. Once a child has been transferred for
31 criminal prosecution pursuant to a voluntary waiver hearing

1 and has been found to have committed the presenting offense or
2 a lesser included offense, the child shall be handled
3 thereafter in every respect as an adult for any subsequent
4 violation of state law, unless the court imposes juvenile
5 sanctions under s. 985.565(4)(b).

6 Section 3. This act shall take effect October 1, 2007.

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SENATE SUMMARY

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