

By Senator Wilson

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1 A bill to be entitled

2 An act relating to the sentencing of juveniles; amending  
3 s. 985.565, F.S.; authorizing the court to sentence a  
4 juvenile using juvenile sanctions, adult sanctions, or a  
5 blend of juvenile and adult sanctions; requiring the  
6 Department of Juvenile Justice to file a written report  
7 with the court if the department believes the child's  
8 sanction is inappropriate; authorizing the court to place  
9 the child on probation; requiring the department to notify  
10 the court before it discharges a child from a sanction;  
11 requiring the court to review the child's educational  
12 needs assessment and make specific findings as to the  
13 child's educational status; authorizing the court to order  
14 that the child attain appropriate educational goals;  
15 listing certain appropriate education goals; reenacting s.  
16 985.556(1), F.S., relating to the voluntary waiver of  
17 juvenile court jurisdiction, to incorporate the amendments  
18 made to s. 985.565, F.S., in a reference thereto;  
19 providing an effective date.

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

22  
23 Section 1. Section 985.565, Florida Statutes, is amended to  
24 read:

25 985.565 Sentencing powers; procedures; alternatives and  
26 blended sanctions for juveniles prosecuted as adults; educational  
27 attainment.--

28 (1) POWERS OF DISPOSITION.--

29 (a) A child who is found to have committed a violation of

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30 law may, as an alternative to adult dispositions, be committed to  
31 the department for treatment in an appropriate program for  
32 children outside the adult correctional system or be placed on  
33 juvenile probation.

34 (b) In determining whether to impose juvenile sanctions,  
35 ~~instead of~~ adult sanctions, or blended juvenile and adult  
36 sanctions, the court shall consider the following criteria:

37 1. The seriousness of the offense to the community and  
38 whether the community would best be protected by juvenile or  
39 adult sanctions.

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

42 3. Whether the offense was against persons or against  
43 property, with greater weight being given to offenses against  
44 persons, especially if personal injury resulted.

45 4. The sophistication and maturity of the offender.

46 5. The record and previous history of the offender,  
47 including:

48 a. Previous contacts with the Department of Corrections,  
49 the Department of Juvenile Justice, the former Department of  
50 Health and Rehabilitative Services, the Department of Children  
51 and Family Services, law enforcement agencies, and the courts.

52 b. Prior periods of probation.

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

55 d. Prior commitments to the Department of Juvenile Justice,  
56 the former Department of Health and Rehabilitative Services, the  
57 Department of Children and Family Services, or other facilities  
58 or institutions.

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59           6. The prospects for adequate protection of the public and  
60 the likelihood of deterrence and reasonable rehabilitation of the  
61 offender if assigned to services and facilities of the Department  
62 of Juvenile Justice.

63           7. Whether the Department of Juvenile Justice has  
64 appropriate programs, facilities, and services immediately  
65 available.

66           8. Whether adult sanctions would provide more appropriate  
67 punishment and deterrence to further violations of law than the  
68 imposition of juvenile sanctions.

69           (2) PRESENTENCE INVESTIGATION REPORT.--

70           (a) Upon a plea of guilty or no contest, the court may  
71 refer the case to the department for investigation and  
72 recommendation as to the suitability of its programs for the  
73 child.

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

77           (3) SENTENCING HEARING.--

78           (a) At the sentencing hearing the court shall receive and  
79 consider a presentence investigation report by the Department of  
80 Corrections regarding the suitability of the offender for  
81 disposition as an adult or as a juvenile. The presentence  
82 investigation report must include a comments section prepared by  
83 the Department of Juvenile Justice, with its recommendations as  
84 to disposition. This report requirement may be waived by the  
85 offender.

86           (b) After considering the presentence investigation report,  
87 the court shall give all parties present at the hearing an

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88 opportunity to comment on the issue of sentence and any proposed  
89 rehabilitative plan. Parties to the case include the parent,  
90 guardian, or legal custodian of the offender; the offender's  
91 counsel; the state attorney; representatives of the Department of  
92 Corrections and the Department of Juvenile Justice; the victim or  
93 victim's representative; representatives of the school system;  
94 and the law enforcement officers involved in the case.

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

101 (d) The court shall notify any victim of the offense of the  
102 hearing and shall notify, or subpoena if appropriate, the  
103 parents, guardians, or legal custodians of the child to attend  
104 the disposition hearing.

105 (4) SENTENCING ALTERNATIVES.--

106 (a) Adult sanctions.--

107 1. Cases prosecuted on indictment.--If the child is found  
108 to have committed the offense punishable by death or life  
109 imprisonment, the child shall be sentenced as an adult. If the  
110 juvenile is not found to have committed the indictable offense  
111 but is found to have committed a lesser included offense or any  
112 other offense for which he or she was indicted as a part of the  
113 criminal episode, the court may sentence as follows:

114 a. As an adult;

115 b. Under chapter 958; or

116 c. As a juvenile under this section.

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117           2. Other cases.--If a child who has been transferred for  
118 criminal prosecution pursuant to information or waiver of  
119 juvenile court jurisdiction is found to have committed a  
120 violation of state law or a lesser included offense for which he  
121 or she was charged as a part of the criminal episode, the court  
122 may sentence as follows:

123           a. As an adult;

124           b. Under chapter 958; or

125           c. As a juvenile under this section.

126           3. Notwithstanding any other provision to the contrary, if  
127 the state attorney is required to file a motion to transfer and  
128 certify the juvenile for prosecution as an adult under s.  
129 985.556(3) and that motion is granted, or if the state attorney  
130 is required to file an information under s. 985.557(2)(a) or (b),  
131 the court must impose adult sanctions.

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

136           5. When a child has been transferred for criminal  
137 prosecution as an adult and has been found to have committed a  
138 violation of state law, the disposition of the case may include  
139 the enforcement of any restitution ordered in any juvenile  
140 proceeding.

141           (b) Juvenile sanctions.--For juveniles transferred to adult  
142 court but who do not qualify for such transfer under s.  
143 985.556(3) or s. 985.557(2)(a) or (b), the court may impose  
144 juvenile sanctions under this paragraph. If juvenile sanctions  
145 ~~sentences~~ are imposed, the court shall, under this paragraph,

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146 | adjudge the child to have committed a delinquent act.  
147 | Adjudication of delinquency shall not be deemed a conviction, nor  
148 | shall it operate to impose any of the civil disabilities  
149 | ordinarily resulting from a conviction. The court shall impose ~~an~~  
150 | ~~adult sanction or~~ a juvenile sanction or ~~and may not~~ sentence the  
151 | child to blended juvenile and adult sanctions ~~a combination of~~  
152 | ~~adult and juvenile punishments. An adult sanction or~~ A juvenile  
153 | sanction or a blended juvenile and adult sanction may include  
154 | enforcement of an order of restitution or probation previously  
155 | ordered in any juvenile proceeding. However, if the court imposes  
156 | a juvenile sanction and the department determines that the  
157 | sanction is inappropriate ~~unsuitable~~ for the child, the  
158 | department shall provide the sentencing court with a written  
159 | report outlining the basis for its objections to the juvenile  
160 | sanction and shall simultaneously provide a copy to the state  
161 | attorney and defense counsel. The department shall return custody  
162 | of the child to the sentencing court for further proceedings,  
163 | including the imposition of juvenile sanctions, blended juvenile  
164 | and adult sanctions, alternative sanctions, or adult sanctions.  
165 | Upon adjudicating a child delinquent under subsection (1), the  
166 | court may sentence the child to juvenile probation, juvenile  
167 | commitment, blended juvenile and adult sanctions, or alternative  
168 | sanctions under ss. 985.435, 985.437, 985.439, 985.441, 985.445,  
169 | 985.45, and 985.455:

170 |       1. The court may place the child on ~~in a~~ probation ~~program~~  
171 | under the supervision of the department for an indeterminate  
172 | period of time until the child reaches the age of 21 ~~19~~ years or  
173 | sooner if discharged by order of the court. If at any time before  
174 | the child's 21st birthday the department seeks to discharge the

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175 child from juvenile probation, the department shall notify the  
176 sentencing court of its intent to discharge the child no later  
177 than 30 days before the discharge. The department shall file a  
178 written notice of its proposal with the clerk of the court and  
179 give a copy of the written notice to the sentencing judge, the  
180 state attorney, and defense counsel at the time it files the  
181 notice with the clerk of the court. Failure of the sentencing  
182 court or the state attorney to object to the department's notice  
183 of discharge within the 30-day period shall be construed as  
184 approval of the proposed discharge. If there is no objection, the  
185 clerk of the court shall close the case.

186       2. The court may commit the child to the department for  
187 treatment in an appropriate program for children for an  
188 indeterminate period of time until the child is 21 or sooner if  
189 discharged by ~~order of the court department~~. If at any time  
190 before the child's 21st birthday the department seeks to  
191 discharge the child from a commitment or after-care program, the  
192 department shall notify the sentencing court of its intent to  
193 discharge the child no later than ~~30~~ 14 days prior to discharge.  
194 The department shall file a written notice of its proposal with  
195 the clerk of the court and give a copy of the written notice to  
196 the sentencing judge, the state attorney, and defense counsel at  
197 the time it files the notice with the clerk of the court. Failure  
198 of the sentencing court or the state attorney to object ~~timely~~  
199 ~~respond~~ to the department's notice of discharge within the 30-day  
200 period shall be considered as approval for discharge. If there is  
201 no objection, the clerk of the court shall close the case.

202       3. The court may commit the child to the department for  
203 treatment in an appropriate program for children for an

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204 indeterminate period of time until the child is 21 years of age  
205 or sooner if discharged by order of the court, followed by  
206 probation under the supervision of the Department of Corrections.  
207 The department shall notify the sentencing court of its intent to  
208 discharge the child no later than 30 days before the discharge.  
209 The department must file a written notice of its proposal with  
210 the clerk of the court and give a copy of the notice to the  
211 sentencing judge, the Department of Corrections, the state  
212 attorney, and defense counsel at the time it files the notice  
213 with the clerk of the court. Failure of the sentencing court or  
214 the state attorney to object to the department's notice of  
215 discharge within the 30-day period shall be construed as approval  
216 of the proposed discharge. An order to discharge may not be  
217 entered until the Department of Corrections has met with the  
218 child and explained the terms of probation.

219 4.3. The court may order disposition under ss. 985.435,  
220 985.437, 985.439, 985.441, 985.445, 985.45, and 985.455 as an  
221 alternative to youthful offender or adult sentencing if the court  
222 determines not to impose youthful offender or adult sanctions.

223 5. Upon sentencing a child under subsection (1) to juvenile  
224 probation, juvenile commitment, blended juvenile and adult  
225 sanctions, or alternative sanctions, the court shall consider the  
226 educational needs assessment conducted pursuant to 985.18(1) and  
227 (2), the predisposition report, together with any other report  
228 prepared pursuant to s. 985.43(1) and (2), and any other relevant  
229 information. The court shall make a finding as to the child's  
230 educational status, including, but not limited to, the child's  
231 strengths, abilities, and unmet and special educational needs.  
232 The court may enter an order, as a condition of probation or

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233 commitment, that the child attain an appropriate educational goal  
234 or goals. Examples of appropriate educationally based goals are:  
235 a. Attainment of a high school diploma or its equivalent.  
236 b. Successful completion of literacy courses.  
237 c. Successful completion of vocational courses.  
238 d. Attendance and successful completion of the child's  
239 current grade if enrolled in school.

240 e. Enrollment in an apprenticeship or similar program.

241 (c) Adult sanctions upon failure of juvenile sanctions.--If  
242 a child proves not to be suitable to a commitment program,  
243 juvenile probation program, or treatment program under paragraph  
244 (b), the department shall provide the sentencing court with a  
245 written report outlining the basis for its objections to the  
246 juvenile sanction and shall simultaneously provide a copy of the  
247 report to the state attorney and the defense counsel. The  
248 department shall schedule a hearing within 30 days. Upon hearing,  
249 the court may revoke the previous adjudication, impose an  
250 adjudication of guilt, and impose any sentence which it may  
251 lawfully impose, giving credit for all time spent by the child in  
252 the department. The court may also classify the child as a  
253 youthful offender under s. 958.04, if appropriate. For purposes  
254 of this paragraph, a child may be found not suitable to a  
255 commitment program, community control program, or treatment  
256 program under paragraph (b) if the child commits a new violation  
257 of law while under juvenile sanctions, if the child commits any  
258 other violation of the conditions of juvenile sanctions, or if  
259 the child's actions are otherwise determined by the court to  
260 demonstrate a failure of juvenile sanctions.

261 (d) Further proceedings heard in adult court.--When a child

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262 is sentenced to juvenile sanctions, further proceedings involving  
263 those sanctions shall continue to be heard in the adult court.

264 (e) School attendance.--If the child is attending or is  
265 eligible to attend public school and the court finds that the  
266 victim or a sibling of the victim in the case is attending or may  
267 attend the same school as the child, the court placement order  
268 shall include a finding pursuant to the proceeding described in  
269 s. 985.455(2), regardless of whether adjudication is withheld.

270

271 It is the intent of the Legislature that the criteria and  
272 guidelines in this subsection are mandatory and that a  
273 determination of disposition under this subsection is subject to  
274 the right of the child to appellate review under s. 985.534.

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

279 985.556 Waiver of juvenile court jurisdiction; hearing.--

280 (1) VOLUNTARY WAIVER.--The court shall transfer and certify  
281 a child's criminal case for trial as an adult if the child is  
282 alleged to have committed a violation of law and, prior to the  
283 commencement of an adjudicatory hearing, the child, joined by a  
284 parent or, in the absence of a parent, by the guardian or  
285 guardian ad litem, demands in writing to be tried as an adult.  
286 Once a child has been transferred for criminal prosecution  
287 pursuant to a voluntary waiver hearing and has been found to have  
288 committed the presenting offense or a lesser included offense,  
289 the child shall be handled thereafter in every respect as an  
290 adult for any subsequent violation of state law, unless the court

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291 imposes juvenile sanctions under s. 985.565(4)(b).

292 Section 3. This act shall take effect October 1, 2008.