

By Senator Wilson

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

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

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

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

29           (1) POWERS OF DISPOSITION.—

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30 (a) A child who is found to have committed a violation of  
31 law may, as an alternative to adult dispositions, be committed  
32 to the department for treatment in an appropriate program for  
33 children outside the adult correctional system or be placed on  
34 juvenile probation.

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

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

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

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

46 4. The sophistication and maturity of the offender.

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

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

53 b. Prior periods of probation.

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

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

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59 or institutions.

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

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

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

70 (2) PRESENTENCE INVESTIGATION REPORT.—

71 (a) Upon a plea of guilty, the court may refer the case to  
72 the department for investigation and recommendation as to the  
73 suitability of its programs for the 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  
77 hearing.

78 (3) SENTENCING HEARING.—

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

87 (b) After considering the presentence investigation report,

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

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

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

106 (4) SENTENCING ALTERNATIVES.—

107 (a) *Adult sanctions*.—

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

115 a. As an adult;

116 b. Under chapter 958; or

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117 c. As a juvenile under this section.

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

124 a. As an adult;

125 b. Under chapter 958; or

126 c. As a juvenile under this section.

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

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

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

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

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146 ~~sentences~~ are imposed, the court shall, under this paragraph,  
147 adjudge the child to have committed a delinquent act.  
148 Adjudication of delinquency shall not be deemed a conviction,  
149 nor shall it operate to impose any of the civil disabilities  
150 ordinarily resulting from a conviction. The court shall impose  
151 ~~an adult sanction or a juvenile sanction or and may not~~ sentence  
152 the child to blended juvenile and adult sanctions ~~a combination~~  
153 ~~of adult and juvenile punishments. An adult sanction or A~~  
154 juvenile sanction or a blended juvenile and adult sanction may  
155 include enforcement of an order of restitution or probation  
156 previously ordered in any juvenile proceeding. However, if the  
157 court imposes a juvenile sanction and the department determines  
158 that the sanction is inappropriate ~~unsuitable~~ for the child, the  
159 department shall provide the sentencing court with a written  
160 report outlining the basis for its objections to the juvenile  
161 sanction and shall simultaneously provide a copy to the state  
162 attorney and defense counsel. The department shall return  
163 custody of the child to the sentencing court for further  
164 proceedings, including the imposition of juvenile sanctions,  
165 blended juvenile and adult sanctions, alternative sanctions, or  
166 adult sanctions. Upon adjudicating a child delinquent under  
167 subsection (1), the court may sentence the child to juvenile  
168 probation, juvenile commitment, blended juvenile and adult  
169 sanctions, or alternative sanctions under ss. 985.435, 985.437,  
170 985.439, 985.441, 985.445, 985.45, and 985.455.

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

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175 before the child's 21st birthday the department seeks to  
176 discharge the child from juvenile probation, the department  
177 shall notify the sentencing court of its intent to discharge the  
178 child no later than 30 days before the discharge. The department  
179 shall file a written notice of its proposal with the clerk of  
180 the court and give a copy of the written notice to the  
181 sentencing judge, the state attorney, and defense counsel at the  
182 time it files the notice with the clerk of the court. Failure of  
183 the sentencing court or the state attorney to object to the  
184 department's notice of discharge within the 30-day period shall  
185 be construed as approval of the proposed discharge. If there is  
186 no objection, the clerk of the court shall close the case.

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

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

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

226       5. Upon sentencing a child under subsection (1) to juvenile  
227 probation, juvenile commitment, blended juvenile and adult  
228 sanctions, or alternative sanctions, the court shall consider  
229 the educational needs assessment conducted pursuant to 985.18(1)  
230 and (2), the predisposition report, together with any other  
231 report prepared pursuant to s. 985.43(1) and (2), and any other  
232 relevant information. The court shall make a finding as to the



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233 child's educational status, including, but not limited to, the  
234 child's strengths, abilities, and unmet and special educational  
235 needs. The court may enter an order, as a condition of probation  
236 or commitment, that the child attain an appropriate educational  
237 goal or goals. Examples of appropriate educationally based goals  
238 are:

239 a. Attainment of a high school diploma or its equivalent.

240 b. Successful completion of literacy courses.

241 c. Successful completion of vocational courses.

242 d. Attendance and successful completion of the child's  
243 current grade if enrolled in school.

244 e. Enrollment in an apprenticeship or similar program.

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

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262 other violation of the conditions of juvenile sanctions, or if  
263 the child's actions are otherwise determined by the court to  
264 demonstrate a failure of juvenile sanctions.

265 (d) *Further proceedings heard in adult court.*—When a child  
266 is sentenced to juvenile sanctions, further proceedings  
267 involving those sanctions shall continue to be heard in the  
268 adult court.

269 (e) *School attendance.*—If the child is attending or is  
270 eligible to attend public school and the court finds that the  
271 victim or a sibling of the victim in the case is attending or  
272 may attend the same school as the child, the court placement  
273 order shall include a finding pursuant to the proceeding  
274 described in s. 985.455(2), regardless of whether adjudication  
275 is withheld.

276

277 It is the intent of the Legislature that the criteria and  
278 guidelines in this subsection are mandatory and that a  
279 determination of disposition under this subsection is subject to  
280 the right of the child to appellate review under s. 985.534.

281 Section 2. For the purpose of incorporating the amendment  
282 made by this act to section 985.565, Florida Statutes, in a  
283 reference thereto, subsection (1) of section 985.556, Florida  
284 Statutes, is reenacted to read:

285 985.556 Waiver of juvenile court jurisdiction; hearing.—

286 (1) VOLUNTARY WAIVER.—The court shall transfer and certify  
287 a child's criminal case for trial as an adult if the child is  
288 alleged to have committed a violation of law and, prior to the  
289 commencement of an adjudicatory hearing, the child, joined by a  
290 parent or, in the absence of a parent, by the guardian or

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291 guardian ad litem, demands in writing to be tried as an adult.  
292 Once a child has been transferred for criminal prosecution  
293 pursuant to a voluntary waiver hearing and has been found to  
294 have committed the presenting offense or a lesser included  
295 offense, the child shall be handled thereafter in every respect  
296 as an adult for any subsequent violation of state law, unless  
297 the court imposes juvenile sanctions under s. 985.565(4)(b).  
298       Section 3. This act shall take effect October 1, 2009.