

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 s.
230 985.18(1) and (2), the predisposition report, together with any
231 other report prepared pursuant to s. 985.43(1) and (2), and any
232 other relevant information. The court shall make a finding as to

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

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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 July 1, 2010.