

House Bill No. 5019

An act relating to juvenile justice; providing a short title; amending s. 39.01, F.S.; including specified law enforcement officers in the definition of “other person responsible for a child’s welfare” for purposes of abuse investigations; amending s. 985.2155, F.S.; revising the definition of the term “fiscally constrained county” for purposes of determining state payment of costs of juvenile detention care; amending s. 985.231, F.S.; conforming cross-references; repealing s. 985.309, F.S., relating to boot camps for children; creating s. 985.3091, F.S.; authorizing the department to contract with a county or municipal law enforcement agency for sheriff’s training and respect programs; providing eligibility requirements for children placed in the programs; specifying required program offerings; specifying program participation time frames; requiring a physician or nurse to provide youth medical treatment during specified hours; requiring compliance with the Protective Action Response policy; requiring the department to adopt rules on specified subjects; defining and prohibiting “harmful psychological intimidation techniques”; providing for evaluations and contract cancellation under specified circumstances; specifying staff training requirements; requiring the department to adopt training rules; requiring specified supervision for staff who provide direct care prior to compliance with training requirements; requiring the completion of exit physical examinations of, and exit statements by, youth upon release from the program; requiring investigations under specified circumstances; requiring the department to maintain specified records and complete an annual report; prohibiting the operation of a program until department rules are adopted and the department has verified program compliance with applicable law and rules; authorizing emergency rules to expedite implementation; amending s. 985.311, F.S.; conforming a cross-reference; creating s. 985.4055, F.S.; providing definitions; requiring the department to adopt rules establishing a Protective Action Response policy; specifying when verbal and physical intervention techniques may be used; specifying prohibited uses of mechanical restraints; prohibiting use of aerosol and chemical agents and Tasers; requiring the department to adopt rules establishing protection action response training curriculums and certification procedures; requiring department and provider direct care employees to be certified in protective action response within specified time frames and to be supervised prior to certification; amending ss. 958.046, 985.31, and 985.314, F.S.; conforming cross-references and terminology; creating the cost of supervision and care waiver pilot program in the Fourth and Eleventh Judicial Circuits; providing definitions; requiring waiver of fees imposed under s. 985.2311, F.S., for successful completion of specified parenting classes; providing conditions applicable to such waiver; providing for review of the pilot program and reports by the Office of Program Policy and Government Accountability; requiring the department to

contract or otherwise arrange for the provision of parenting classes; providing for future repeal; providing an effective date.

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

Section 1. This act may be cited as the “Martin Lee Anderson Act of 2006.”

Section 2. Subsection (47) of section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(47) “Other person responsible for a child’s welfare” includes the child’s legal guardian, legal custodian, or foster parent; an employee of a private school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child’s welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child’s care. For the purpose of departmental investigative jurisdiction, this definition does not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection; ~~or~~ employees of municipal or county detention facilities; or employees of the Department of Corrections, while acting in an official capacity.

Section 3. Paragraph (b) of subsection (2) of section 985.2155, Florida Statutes, is amended to read:

985.2155 Shared county and state responsibility for juvenile detention.—

(2) As used in this section, the term:

(b) “Fiscally constrained county” means a county within designated as a rural area of critical economic concern as designated by the Governor pursuant to under s. 288.0656 or each county for which the value of a mill will raise in the county is no more than \$5 million in revenue \$3 million, based on the certified school taxable value from the previous July 1 property valuations and tax data annually published by the Department of Revenue under s. 195.052.

Section 4. Paragraph (j) of subsection (1) of section 985.231, Florida Statutes, is amended to read:

985.231 Powers of disposition in delinquency cases.—

(1)

(j) If the offense committed by the child was grand theft of a motor vehicle, the court:

1. Upon a first adjudication for a grand theft of a motor vehicle, may place the ~~child youth~~ in a ~~sheriff's training and respect program boot camp~~, unless the child is ineligible ~~under s. 985.3091 pursuant to s. 985.309~~, and shall order the ~~child youth~~ to complete a minimum of 50 hours of community service.

2. Upon a second adjudication for grand theft of a motor vehicle which is separate and unrelated to the previous adjudication, may place the ~~child youth~~ in a ~~sheriff's training and respect program boot camp~~, unless the child is ineligible ~~under s. 985.3091 pursuant to s. 985.309~~, and shall order the ~~child youth~~ to complete a minimum of 100 hours of community service.

3. Upon a third adjudication for grand theft of a motor vehicle which is separate and unrelated to the previous adjudications, shall place the ~~child youth~~ in a ~~sheriff's training and respect program boot camp~~ or other treatment program, unless the child is ineligible ~~under s. 985.3091 pursuant to s. 985.309~~, and shall order the ~~child youth~~ to complete a minimum of 250 hours of community service.

Section 5. Section 985.309, Florida Statutes, is repealed.

Section 6. Section 985.3091, Florida Statutes, is created to read:

985.3091 Sheriff's training and respect programs.—

(1)(a) For purposes of this section, the term "agency" means a county or municipal law enforcement agency.

(b) Contingent upon specific appropriation, local funding, or specific appropriation and local funding, an agency may, under contract with the department, implement and operate a sheriff's training and respect program to provide intensive education, physical training, and rehabilitation for children who are eligible under subsection (2). A sheriff's training and respect program shall be under the agency's supervisory authority as determined by the contract between the department and the agency.

(2) A child is eligible for placement in a sheriff's training and respect program if he or she:

(a) Is at least 14 years of age but less than 18 years of age at the time of adjudication.

(b) Has been committed to the department for any offense that, if committed by an adult, would be a felony other than a capital felony, a life felony, or a violent felony of the first degree.

(c) Is physically examined by a physician licensed under chapter 458 or chapter 459 or an advanced registered nurse practitioner licensed and certified under chapter 464.

(d) Has a physical, psychological, and substance abuse profile that is conducive to successful completion of the program, as determined by the agency's and department's review of the preadmission physical examination under paragraph (c) and of preadmission psychological and substance abuse

screenings, which must be conducted or ordered to be conducted by the department.

(e) Will be placed in the judicial circuit in which the child was adjudicated or, if there is no sheriff's training and respect program in that judicial circuit, the child may be placed in the judicial circuit nearest to the judicial circuit in which he or she was adjudicated which has a sheriff's training and respect program.

(3) A sheriff's training and respect program shall require children to:

(a) Receive a written, easily understandable statement that sets forth, and a verbal description of, their rights under this section. At the time of admission into the sheriff's training and respect program, each child must acknowledge in writing his or her receipt and understanding of the written statement and verbal description.

(b) Participate in physical training exercises.

(c) Complete educational, vocational, community service, and substance abuse programs.

(d) Receive training in life and job skills and in techniques for appropriate decisionmaking.

(e) Receive counseling that is directed at replacing criminal thinking, beliefs, and values with moral thinking, beliefs, and values.

(4) A sheriff's training and respect program must provide for youth medical treatment needs by a physician licensed under chapter 458 or chapter 459, an advanced registered nurse practitioner licensed and certified under chapter 464, or a registered nurse licensed under chapter 464 who works daily between the hours of 7:00 a.m. and 9:00 p.m. and must provide for on-call access to at least one such medical professional at all other times.

(5) A sheriff's training and respect program shall be a moderate-risk residential program and must provide conditional release assessment and services in accordance with s. 985.316. The minimum period of participation in the residential component of a sheriff's training and respect program is 4 months; however, this subsection does not prohibit operation of a program that requires the participants to spend more than 4 months in the residential component of the program or that requires the participants to complete two sequential programs of 4 months each in the residential component of the program.

(6) Staff in a sheriff's training and respect program who exercise direct care, as defined in s. 985.4055, shall comply with the Protective Action Response policy established in department rules adopted under s. 985.4055(2)(a).

(7) The department shall adopt rules under ss. 120.536(1) and 120.54 for the sheriff's training and respect program that specify:

(a) Requirements for the preadmission physical examinations and psychological and substance abuse screenings required by subsection (2).

(b) Authorized disciplinary sanctions and restrictions on the privileges of the general population of children in the program.

(c) Prohibitions on the use of harmful psychological intimidation techniques. For purposes of this section, the term "harmful psychological intimidation techniques":

1. Includes the following actions when intentionally used as a therapeutic or training technique or as a means to encourage compliance with program requirements:

a. The threat of physical force or violence.

b. An intentional attempt to humiliate or embarrass a child.

c. An intentional attempt to diminish a child's self-confidence or otherwise psychologically break a child's will.

d. Any action that would be considered child abuse or neglect under chapter 39 or chapter 827.

2. Does not include the following actions:

a. Direct and forceful communication to a child of program requirements or legitimate performance expectations prior to or during participation in program activities, including positive, active encouragement of children engaged in physical training exercises.

b. Communication necessary to inform a child of noncompliance with program requirements or appropriate actions to remediate such noncompliance.

c. Communication necessary to inform a child of poor performance or appropriate actions to remediate such poor performance.

d. Communications or other actions necessary to maintain order or safety in a program.

e. Any lawful and reasonable communications or actions that are permissible for parents, other juvenile justice programs, school officials, or other adults who have custody of or supervisory responsibilities for children.

(d) Requirements for provision of notice by the program to the department and for the removal of a child from the program if the child becomes unmanageable or ineligible for the program due to changes in his or her physical, psychological, or substance abuse profile.

(e) Requirements for the prominent display of the telephone number of the statewide abuse registry and for immediate access by children in the program, upon request, to a telephone for the purpose of contacting the statewide abuse registry, the public defender's office, his or her attorney, or a law enforcement agency.

(f) Requirements for the delivery of a copy of each child's exit statement under subsection (10) to the department by facsimile or electronic mail.

(8)(a) Evaluations under s. 985.412(5) of each sheriff's training and respect program shall be conducted quarterly during the first year of the program's operation. Thereafter, if the program met the minimum thresholds during its most recent evaluation, the program shall be evaluated at least once annually. If a sheriff's training and respect program fails to meet the minimum thresholds, the department shall cancel the contract for the program:

1. Immediately if the program has a deficiency in a critical life safety aspect of its operations, as defined in department rule, or has failed to train its staff as required under subsection (9).

2. If the program fails to achieve compliance with the minimum thresholds within 3 months, unless there are documented extenuating circumstances, as defined in department rule.

(b) Upon cancellation of a contract under paragraph (a), the program's operations shall immediately cease and the department shall immediately discontinue any state payments to the program.

(9)(a) The department shall adopt rules under ss. 120.536(1) and 120.54 that establish training requirements that must be completed by staff in a sheriff's training and respect program within 90 calendar days following the person's date of hire, and that must, at a minimum, require:

1. Administrative staff to successfully complete 120 contact hours of department-approved training.

2. Staff who provide direct care, as defined in s. 985.4055 to be:

a. Certified correctional, correctional probation, or law enforcement officers under chapter 943 and to receive at least 20 hours of department-approved training in the Protective Action Response policy established in department rules adopted under s. 985.4055(2)(a); or

b. Certified in protective action response under s. 985.4055(2)(b)-(e) and to successfully complete 200 contact hours of department-approved training, which must include, but is not limited to, training on:

(I) State and federal laws relating to child abuse.

(II) Authorized disciplinary sanctions and privilege restrictions under paragraph (7)(b) and prohibited harmful psychological intimidation techniques under paragraph (7)(c).

(III) Appropriate counseling techniques and aggression control methods.

(IV) Appropriate methods for dealing with children who have been placed in programs that emphasize physical fitness and personal discipline, including training on the identification of, and appropriate responses to, children who are experiencing physical or mental distress.

(V) Cardiopulmonary resuscitation, choke-relief, and other emergency medical procedures.

(b) All department-approved training courses under this subsection must be taught by one or more persons who are certified as, or who have completed the necessary education and training to be, an instructor for the course being taught. A training course in counseling techniques must be taught by a person who has at least a bachelor's degree in social work, counseling, psychology, or a related field.

(c) A person who exercises direct care, as defined in s. 985.4055, in a sheriff's training and respect program prior to successful completion of the training requirements in this subsection must be directly supervised by a person who has successfully completed the training requirements in this subsection.

(10) Prior to release of a child from a sheriff's training and respect program, the child:

(a) Must be physically examined by a physician licensed under chapter 458 or chapter 459 or an advanced registered nurse practitioner licensed and certified under chapter 464. Any evidence of abuse as defined in s. 39.01(2) must be documented and immediately reported by the examiner to the statewide abuse registry and the department.

(b) Must sign an exit statement indicating whether his or her rights under this section were observed and whether he or she was subjected to any abuse as defined in s. 39.01(2), harmful psychological intimidation techniques, or violations of the Protective Action Response policy established in department rules adopted under s. 985.4055(2)(a). Any allegation by the child that:

1. He or she was subjected to abuse as defined in s. 39.01(2) in the sheriff's training and respect program must be investigated by the Department of Children and Family Services under s. 39.302.

2. His or her rights under this section were not observed or that he or she was subjected to harmful psychological intimidation techniques or to violations of the department's Protective Action Response policy must be investigated by the department's Inspector General.

(c) The sheriff's training and respect program shall deliver a copy of each child's exit statement at the time it is executed to:

1. The department in the manner prescribed under paragraph (7)(f).
2. The statewide abuse registry if it contains any allegation of abuse as defined in s. 39.01(2).

(11) The department must:

(a) Maintain records for each sheriff's training and respect program participant and shall monitor his or her recidivism, educational progress, and employment placement for at least 1 year following his or her release from

the program. Recidivism statistics shall indicate the degree and severity of the criminal activity.

(b) Annually publish an outcome evaluation study of each sheriff's training and respect program that includes recidivism statistics.

(12) Children shall not be admitted to a sheriff's training and respect program until the department has adopted the rules required by this section and has verified that each program is in compliance with all laws and rules applicable to the program. The department may adopt emergency rules pursuant to s. 120.54(4) if necessary to allow operation of sheriff's training and respect programs beginning July 1, 2006.

Section 7. Paragraph (i) of subsection (3) of section 985.311, Florida Statutes, is amended to read:

985.311 Intensive residential treatment program for offenders less than 13 years of age.—

(3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND TREATMENT.—

(i) The treatment and placement recommendations shall be submitted to the court for further action pursuant to this paragraph:

1. If it is recommended that placement in an intensive residential treatment program for offenders less than 13 years of age is inappropriate, the court shall make an alternative disposition pursuant to s. ~~985.3091~~ 985.309 or other alternative sentencing as applicable, utilizing the recommendation as a guide.

2. If it is recommended that placement in an intensive residential treatment program for offenders less than 13 years of age is appropriate, the court may commit the child to the department for placement in the restrictiveness level designated for intensive residential treatment program for offenders less than 13 years of age.

Section 8. Section 985.4055, Florida Statutes, is created to read:

985.4055 Protective action response.—

(1) For purposes of this section, the term:

(a) "Direct care" means direct contact with youth for the purpose of providing care, supervision, custody, or control of youth in a detention facility, delinquency program, or commitment program within any restrictiveness level, which is operated by the department or by a provider under contract with the department.

(b) "Employee" means any person who exercises direct care. The term "employee" does not include a licensed medical professional, mental health counselor, substance abuse counselor, or social services counselor whose primary responsibilities are to provide treatment to youth in a detention

facility, delinquency program, or commitment program within any restrictiveness level, which is operated by the department or by a provider under contract with the department.

(c) “Protective Action Response policy” means the policy governing the use of verbal and physical intervention techniques, mechanical restraints, aerosol and chemical agents, and Tasers by employees.

(d) “Taser” means any mechanism that is designed to emit or project an electronic, magnetic, or other type of charge or shock for the purpose of temporarily incapacitating a person.

(2) The department shall adopt rules under ss. 120.536(1) and 120.54 that:

(a) Establish a Protective Action Response policy that:

1. Defines the authorized level of response by an employee to each level of verbal or physical resistance by a youth.

2. Requires the use of verbal intervention techniques as the initial response by an employee to verbal or physical resistance by a youth, except where physical intervention techniques are necessary to prevent:

a. Physical harm to the youth, employee, or another person;

b. Property damage; or

c. The youth from escaping or absconding from lawful supervision.

3. Defines authorized physical intervention techniques and the situations under which employees may use these techniques for youth. Pain compliance techniques and use of less than lethal force shall be prohibited, except where necessary to prevent:

a. Physical harm to the youth, employee, or another person;

b. Property damage; or

c. The youth from escaping or absconding from lawful supervision.

Lethal force shall be prohibited, except where necessary to protect the employee or another person from an imminent threat of great bodily harm or death. Prior authorization by an employee’s supervisor for the use of physical intervention techniques shall be obtained when practical.

4. Defines authorized use of mechanical restraints and the situations under which employees may use such restraints on youth. Prohibited uses of mechanical restraints shall include the use of neck restraints and the securing of a youth to a fixed object. Supervision requirements for youth who are secured in mechanical restraints shall include constant and direct visual monitoring by an employee for purposes of ensuring youth safety and ascertaining indications by the youth that restraints are no longer necessary.

Prior authorization by an employee's supervisor for the use of mechanical restraints shall be obtained when practical.

5. Prohibits the use of aerosol or chemical agents, including, but not limited to, oleoresin capsicum spray and ammonia capsules, on a youth unless required for medical treatment of the youth by a licensed medical professional.

6. Prohibits the use of a Taser on a youth.

(b) Establish training curriculums for protective action response certification of employees and instructors. The training curriculum for employee certification shall, at a minimum, require the employee to:

1. Complete instruction on the Protective Action Response policy.

2. Obtain a passing score:

a. On a written examination that tests the employee's knowledge and understanding of the Protective Action Response policy.

b. During an evaluation by an instructor of the employee's physically demonstrated ability to implement the Protective Action Response policy.

(c) Require training curriculums for protective action response certification of employees to be taught by instructors who have been certified under the training curriculum for protective action response certification of instructors.

(d) Except as provided in s. 985.3091(9) for specified certified officers, require each employee who was not certified by the department in protective action response prior to July 1, 2006, to receive his or her protective action response certification by September 30, 2006, or within 90 calendar days following his or her date of hire, whichever date is later.

(e) Require any employee who exercises direct care prior to receiving his or her protective action response certification to be directly supervised by an employee who has received his or her protective action response certification.

Section 9. Section 958.046, Florida Statutes, is amended to read:

958.046 Placement in county-operated boot camp programs for youthful offenders.—In counties where there are county-operated youthful offender boot camp programs, other than boot camps described in s. 958.04 or sheriff's training and respect programs in s. 985.3091 ~~985.309~~, the court may sentence a youthful offender to such a boot camp. In county-operated youthful offender boot camp programs, juvenile offenders shall not be commingled with youthful offenders.

Section 10. Paragraph (i) of subsection (3) of section 985.31, Florida Statutes, is amended to read:

985.31 Serious or habitual juvenile offender.—

(3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND TREATMENT.—

(i) The treatment and placement recommendations shall be submitted to the court for further action pursuant to this paragraph:

1. If it is recommended that placement in a serious or habitual juvenile offender program or facility is inappropriate, the court shall make an alternative disposition pursuant to s. ~~985.3091~~ 985.309 or other alternative sentencing as applicable, ~~using~~ utilizing the recommendation as a guide.

2. If it is recommended that placement in a serious or habitual juvenile offender program or facility is appropriate, the court may commit the child to the department for placement in the restrictiveness level designated for serious or habitual delinquent children programs.

Section 11. Section 985.314, Florida Statutes, is amended to read:

985.314 Commitment programs for juvenile felony offenders.—

(1) Notwithstanding any other law and regardless of the child's age, a child who is adjudicated delinquent, or for whom adjudication is withheld, for an act that would be a felony if committed by an adult, shall be committed to:

(a) A ~~sheriff's training and respect boot camp~~ program under s. ~~985.3091~~ 985.309 if the child has participated in an early delinquency intervention program as provided in s. 985.305.

(b) A program for serious or habitual juvenile offenders under s. 985.31 or an intensive residential treatment program for offenders less than 13 years of age under s. 985.311, if the child has participated in an early delinquency intervention program and has completed a sheriff's training and respect boot camp program.

(c) A maximum-risk residential program, if the child has participated in an early delinquency intervention program, has completed a sheriff's training and respect boot camp program, and has completed a program for serious or habitual juvenile offenders or an intensive residential treatment program for offenders less than 13 years of age. The commitment of a child to a maximum-risk residential program must be for an indeterminate period, but may not exceed the maximum term of imprisonment that an adult may serve for the same offense.

(2) In committing a child to the appropriate program, the court may consider an equivalent program of similar intensity as being comparable to a program required under subsection (1).

Section 12. Cost of supervision and care waiver; pilot program.—

(1) For purposes of this section, the term:

(a) "Approved parenting class" means a class approved by the department under subsection (4).

(b) "Court" means a circuit court in the Fourth or Eleventh Judicial Circuits.

(c) "Department" means the Department of Juvenile Justice.

(d) "Parent" means a parent, as defined in s. 985.2311(13), Florida Statutes, whose child's delinquency case comes before a circuit court in the Fourth or Eleventh Judicial Circuit.

(2)(a) Notwithstanding any contrary provision of s. 985.2311, Florida Statutes, for the period of October 1, 2006, through June 30, 2009, the court shall enter an order waiving the fees required to be paid under s. 985.2311, Florida Statutes, by a parent if the parent successfully completes an approved parenting class and presents the court with notarized documentation of such completion.

(b) Participation in an approved parenting class under this subsection is voluntary and the parent is responsible for the payment of all costs associated with participation in the class.

(c) A parent who fails to successfully complete an approved parenting class shall pay the full amount of fees required by s. 985.2311, Florida Statutes.

(d) A parent may only have fees waived under this subsection once.

(3) The Office of Program Policy and Government Accountability shall evaluate the pilot program created by this section and shall submit a written report to the appropriate substantive and fiscal committees of the Legislature, the Governor, and the Department of Juvenile Justice on September 30, 2007, and annually thereafter, which identifies for the Fourth and Eleventh Judicial Circuits during the fiscal year preceding the report:

(a) The number of delinquency cases in which fees were required to be ordered under s. 985.2311, Florida Statutes, and the total amount of those fees.

(b) The number of delinquency cases in which parents agreed to complete an approved parenting class and the number of delinquency cases in which the parent submitted notarized documentation of successful completion to the court.

(c) The number of delinquency cases in which the court entered an order waiving fees under subsection (2) and the total amount of fees waived.

(d) The number of youth, as such data becomes available, who are taken into custody for a felony or misdemeanor within 6 months following their release from department custody or supervision, whichever occurs later, and whose parents' fees under s. 985.2311, Florida Statutes, are:

1. Waived by court order under subsection (2).
2. Not waived by court order under subsection (2).

(4) The department shall contract or otherwise arrange for the provision of parenting courses in the Fourth and Eleventh Judicial Circuits between October 1, 2006, through June 30, 2009.

(5) This section is repealed October 1, 2009.

Section 13. This act shall take effect July 1, 2006.

Approved by the Governor May 31, 2006.

Filed in Office Secretary of State May 31, 2006.