

CHAPTER 2011-54

Senate Bill No. 2114

An act relating to juvenile justice; amending s. 985.441, F.S.; revising provisions concerning active control over a child committed to the Department of Juvenile Justice; prohibiting a court from committing certain youth at a restrictiveness level other than minimum-risk non-residential; authorizing a court to commit certain youth to a low-risk or moderate-risk residential placement; limiting transfers of certain youth; amending ss. 985.0301, 985.033, and 985.46, F.S.; conforming cross-references; providing an effective date.

WHEREAS, 94 percent of Florida youth grow up to be productive citizens, but the 6 percent of Florida youth who become delinquent cost the state of Florida an average of \$5,200 per child annually according to 2008 statistics, and

WHEREAS, according to national studies, 27 percent of abused or neglected children become delinquent, and

WHEREAS, one of the most effective ways to reduce delinquency is to prevent child abuse, abandonment, and neglect, and

WHEREAS, Florida's juvenile commitment programs have a 39 percent recidivism rate within 1 year, and

WHEREAS, the Department of Juvenile Justice shows that 59 percent of the juveniles being rearrested offend within 120 days after being released, revealing a critical transition period currently not being addressed, and

WHEREAS, the State of Washington undertook a study that demonstrated that a significant level of future prison construction can be avoided, taxpayer dollars can be saved, and crime rates can be reduced by a portfolio of evidence-based youth service options, and

WHEREAS, it has been proven that at-risk youth benefit from a comprehensive approach through coordination of intensive prevention, diversion, and family services, and

WHEREAS, local management fosters all these approaches, ensures stronger relationships between providers and the family, and allows providers to assist in strengthening relationships between the child and the family, and

WHEREAS, instead of competing for funding, prevention, diversion, and juvenile justice services should cooperate with the goal of keeping youth out of juvenile detention, NOW, THEREFORE,

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

Section 1. Section 985.441, Florida Statutes, is amended to read:

985.441 Commitment.—

(1) The court that has jurisdiction of an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:

(a) Commit the child to a licensed child-caring agency willing to receive the child; however, the court may not commit the child to a jail or to a facility used primarily as a detention center or facility or shelter.

(b) Commit the child to the department at a restrictiveness level defined in s. 985.03. Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, ~~and~~ urine monitoring for substance abuse, electronic monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program. If the child is not successful in the conditional release program, the department may use the transfer procedure under subsection (4) ~~(3)~~.

(c) Commit the child to the department for placement in a program or facility for serious or habitual juvenile offenders in accordance with s. 985.47.

1. Following a delinquency adjudicatory hearing under s. 985.35 and a delinquency disposition hearing under s. 985.433 that results in a commitment determination, the court shall, on its own or upon request by the state or the department, determine whether the protection of the public requires that the child be placed in a program for serious or habitual juvenile offenders and whether the particular needs of the child would be best served by a program for serious or habitual juvenile offenders as provided in s. 985.47. The determination shall be made under ss. 985.47(1) and 985.433(7).

2. Any commitment of a child to a program or facility for serious or habitual juvenile offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense.

(d) Commit the child to the department for placement in a program or facility for juvenile sexual offenders in accordance with s. 985.48, subject to specific appropriation for such a program or facility.

1. The child may only be committed for such placement pursuant to determination that the child is a juvenile sexual offender under the criteria specified in s. 985.475.

2. Any commitment of a juvenile sexual offender to a program or facility for juvenile sexual offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense.

(2) Notwithstanding subsection (1), the court having jurisdiction over an adjudicated delinquent child whose underlying offense was a misdemeanor may not commit the child for any misdemeanor offense or any probation violation at a restrictiveness level other than minimum-risk nonresidential unless the probation violation is a new violation of law constituting a felony. However, the court may commit such child to a low-risk or moderate-risk residential placement if:

1. The child has previously been adjudicated for a felony offense;
2. The child has been adjudicated or had adjudication withheld for three or more misdemeanor offenses;
3. The child is before the court for disposition for a violation of s. 800.03, s. 806.031, or s. 828.12; or
4. The court finds by a preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the child would be best served by such placement. Such finding must be in writing.

(3)(2) The nonconsent of the child to commitment or treatment in a substance abuse treatment program in no way precludes the court from ordering such commitment or treatment.

(4)(3) The department may transfer a child, when necessary to appropriately administer the child's commitment, from one facility or program to another facility or program operated, contracted, subcontracted, or designated by the department, including a postcommitment nonresidential conditional release program, except that the department may not transfer any child adjudicated solely for a misdemeanor to a residential program except as provided in subsection (2). The department shall notify the court that committed the child to the department and any attorney of record for the child, in writing, of its intent to transfer the child from a commitment facility or program to another facility or program of a higher or lower restrictiveness level. The court that committed the child may agree to the transfer or may set a hearing to review the transfer. If the court does not respond within 10 days after receipt of the notice, the transfer of the child shall be deemed granted.

Section 2. Paragraph (d) of subsection (5) of section 985.0301, Florida Statutes, is amended to read:

985.0301 Jurisdiction.—

(5)

(d) The court may retain jurisdiction over a child committed to the department for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program to allow the child to participate in a juvenile conditional release program pursuant to s. 985.46. ~~In no case shall~~ The jurisdiction of the court may not be retained after beyond the child's 22nd birthday. However, if the child is not successful in the conditional

release program, the department may use the transfer procedure under s. 985.441(4) ~~s. 985.441(3)~~.

Section 3. Subsection (2) of section 985.033, Florida Statutes, is amended to read:

985.033 Right to counsel.—

(2) This section does not apply to transfer proceedings under s. 985.441(4) ~~s. 985.441(3)~~, unless the court sets a hearing to review the transfer.

Section 4. Subsection (4) of section 985.46, Florida Statutes, is amended to read:

985.46 Conditional release.—

(4) A juvenile under nonresidential commitment placement continues ~~will continue to be~~ on commitment status and is ~~the~~ subject to the transfer provision under s. 985.441(4) ~~s. 985.441(3)~~.

Section 5. This act shall take effect July 1, 2011.

Approved by the Governor May 26, 2011.

Filed in Office Secretary of State May 26, 2011.