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LEGISLATIVE ACTION REQUEST SUMMARY

1. JUVENILE JUSTICE REFORM

Need for Amendment

Currently, the juvenile justice system woefully fails to address serious offenses committed by youthful offenders. The State Attorney is currently only able to resolve violent juvenile cases by charging them as adults, or relinquishing jurisdiction to the Department of Juvenile Justice, which typically requires a short-term treatment program that does not provide long-term solutions. No current State programs remove juveniles from problematic environments long enough for the juvenile to experience changed behavior or attitudes. The State Attorney would like more options for addressing juveniles who commit serious offenses that would both rehabilitate the juvenile and protect the public.

Proposed Amendments

985.01. Purposes and intent. –

(1) The purposes of this chapter are:

...

(d) To ensure the protection of society, by providing for a comprehensive ~~standardized~~ assessment of the child's needs so that the most appropriate control, discipline, punishment, and treatment can be administered consistent with the seriousness of the act committed, the community's long-term need for public safety, the prior record of the child, and the specific rehabilitation needs of the child, while also providing, whenever possible, restitution to the victim of the offense.

...

(h) To care for children in the least restrictive and most appropriate service environments to ensure that children assessed as low ~~and moderate~~ risk to reoffend are not committed to residential programs, unless the court deems such placement appropriate.

985.03. Definitions. –

As used in this chapter, the term:

...

(21) “Disposition hearing” means a hearing in which the court determines the most appropriate dispositional services ~~in the least restrictive available setting~~ provided for under part VII, in delinquency cases.

...

(43) “Replica firearm” means any replica of a firearm, toy gun or other item that substantially looks like a firearm or is modified to reasonably look like a real functioning firearm when it is used, possessed, displayed or discharged.

985.0301. Jurisdiction.—

(5)(a) Notwithstanding s. 743.07, and except as provided in paragraph (b), when the jurisdiction of any child who is alleged to have committed a delinquent act or violation of law is obtained, the court shall retain jurisdiction to dispose of a case, unless relinquished by its order, until the child reaches 19 years of age, with the same power over the child which the court had before the child became an adult.

(b) The court shall retain jurisdiction, unless relinquished by its own order:

1. Over a child on probation until the child reaches 19 years of age.
2. Over a child committed to the department until the child reaches 21 years of age, specifically for the purpose of allowing the child to complete the commitment program, including conditional release supervision or post commitment probation if youth is 19 years of age or older upon release from commitment program.

985.032. Legal representation for delinquency cases.-

(1) For cases arising under this chapter, the state attorney shall represent the state.

(2) Any request by the department to modify a court’s order, to include but not be limited to, detention, probation or commitment orders and recommendations for early termination of probation or release from a commitment program, shall be made by department counsel unless the request addresses a scrivener’s error.

(3) A juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld shall be assessed costs of prosecution as provided in s. 938.27.

985.433 Disposition hearings in delinquency.-

...

(7) The predisposition report, results of the multidisciplinary staffing, and any of the department’s recommendations therein are to be given the weight the court deems appropriate.

It is the intent of the Legislature that the criteria set forth in this subsection are general guidelines to be followed at the discretion of the court and not mandatory requirements of procedure. It is not the intent of the Legislature to provide for the appeal of the disposition made under this section.

~~(8)(7)~~ If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing. The determination shall include a specific finding of the reasons for the decision to adjudicate and to commit the child to the department, including any determination that the child was a member of a criminal gang; used, possessed, displayed or discharged a firearm or replica firearm; or used or displayed a deadly weapon.

(a) The department shall recommend to the court the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child if commitment is recommended. If the court has determined that the child was a member of a criminal gang, that determination shall be given great weight in identifying the most appropriate restrictiveness level for the child. The court shall consider the department's recommendation in making its commitment decision.

(b) The court ~~shall~~ may commit the child to the department at the restrictiveness level identified or may order placement at a different restrictiveness level. The court shall state ~~for the record in writing~~ the reasons that establish by a preponderance of the evidence why the court is deviating disregarding the assessment of the child and from the restrictiveness level recommended by the department. Any party may appeal the court's findings resulting in a modified level of restrictiveness under this paragraph.

(c) If the court determines that it is necessary, pursuant to s. 985.465, for a child to stay in a physically secure residential commitment program in excess of 36 months, the court shall state in writing the reasons why it finds the minimum length of stay necessary. The court may consider the following factors when making this determination of necessity:

(i) Whether the current offense would be a life or first-degree felony if committed by an adult;

(ii) Whether the current offense involves the possession, display, or discharge of a firearm;

(iii) Whether the current offense was against a person and not property;

(iv) Whether the current offense was committed in an aggressive, violent, premeditated or willful manner;

(v) Whether the child has prior adjudications or withholds of adjudication for offenses involving firearms or the display or use of a deadly weapon;

(vi) Whether the child has prior adjudications or withholds of adjudication for offenses listed in s. 985.465(1);

(vii) Whether the child has any mental health issues or intellectual disabilities that would make extended commitment detrimental to the child's development;

(viii) Whether the child acted under extreme duress or under the domination of another person;

(ix) Whether the child has no prior adjudications or withholds of adjudication; or

(x) Whether the child has been unsuccessful in less-restrictive rehabilitative placements.

~~(e)~~(d) The court may also require that the child be placed in a probation program following the child's discharge from commitment. Community-based sanctions under subsection (8) may be imposed by the court at the disposition hearing or at any time prior to the child's release from commitment.

~~(9)~~(8) If the court determines not to adjudicate and commit to the department, then the court shall determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are not limited to, counselling services, participation in substance abuse treatment, a day-treatment probation program, restitution in money or in kind, a curfew, supervised release with or without electronic monitor, revocation or suspension of the driver license of the child, community service, and appropriate educational programs as determined by the district school board

985.455. Other dispositional issues.—

(3) Any commitment of a delinquent child to the department ~~must be for an indeterminate period of time, which may include periods of temporary release~~ must have the Court determine a minimum period of time to remain in the program; however, the child must remain until the program is completed. ~~however,~~ The period of time may not exceed the maximum term of imprisonment that an adult may serve for the same offense, except that the duration of a minimum-risk nonresidential commitment for an offense that is a misdemeanor of the second degree, or is equivalent to a misdemeanor of the second degree, may be for a period not to exceed 6 months. ~~The duration of the child's placement in a commitment program of any restrictiveness level shall be based on objective performance-based treatment planning.~~ The child shall have an objective performance-based treatment plan while in the commitment program. The child's treatment plan progress and adjustment-related issues shall be reported to the court quarterly, unless the court requests monthly reports. If the child is under the jurisdiction of a dependency court, the court may receive and consider any information provided by the Guardian Ad Litem Program or the child's attorney ad litem, if appointed. The child's length of stay in a commitment program may be extended if the child fails to comply with or participate in treatment activities. ~~The child's length of stay in the program shall not be extended for purposes of sanction or punishment.~~ Any temporary release from such program must be approved by the court. Any child so committed may be discharged from institutional confinement or a program upon the direction of the department with the concurrence of the court. The child's treatment plan progress and adjustment-related issues must be communicated to the court at the time the department requests the court to consider releasing the child from the commitment program. The department shall give the court that committed the child to the department reasonable notice, in writing, of its desire to discharge the child from a commitment facility. The court that committed the child may thereafter accept or reject the request. If the court does not respond within 10 days after receipt of the notice, the request of the department shall be deemed granted. This section does not limit the department's authority to revoke a child's temporary release status and return the child to a commitment facility for any violation of the terms and conditions of the temporary release.

985.465 Juvenile correctional facilities or juvenile prison. —A juvenile correctional facility or juvenile prison is a physically secure residential commitment program with a designated length of stay from 18 months to 36 months or longer if the court makes a finding of necessity as required in s. 985.433(8)(c), primarily serving

children ~~13~~ 12 years of age to ~~19~~ 21 years of age or until the jurisdiction of the court expires. Each child committed to this level must meet one of the following criteria:

(1) The child is at least ~~13~~ 12 years of age at the time of the disposition for the current offense and has been adjudicated on the current offense for:

- (a) Arson;
- (b) Sexual battery;
- (c) Robbery;
- (d) Kidnapping;
- (e) Aggravated child abuse;
- (f) Aggravated assault with a firearm or replica firearm;
- (g) Aggravated stalking;
- (h) Murder;
- (i) Manslaughter;
- (j) Unlawful throwing, placing, or discharging of a destructive device or bomb;
- (k) Armed burglary;
- (l) Aggravated battery;
- (m) Carjacking;
- (n) Home-invasion robbery;
- (o) Burglary with an assault or battery;
- (p) Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;

~~or~~

(q) Carrying, displaying, using, threatening to use, or attempting to use a ~~weapon or~~ firearm or replica firearm during the commission of a felony; or displaying or using a deadly weapon during the commission of a felony;

or:-

—(r) Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.

1.A. TOLLING JUVENILE PROBATIONARY PERIOD PENDING OUTCOME OF PROBATION VIOLATION HEARING. (Amendment will mirror adult probationary periods, which are tolled pending the hearing)

Need for Amendment

Currently, when a juvenile is placed on probation and the State files a Violation of Probation, the juvenile's probationary period is not tolled pending the hearing. This is unlike the adult system, where the probationary period is tolled pending the hearing. FS 948.06.

The problem this causes in the juvenile system is that since the juvenile remains on probation and the period continues to run, if the hearing is not held quickly, the probationary period will run before the hearing. This happens regularly because the law does not allow the juvenile to be detained at JDC until the VOP hearing, under most circumstances. The juvenile is out on the streets continuing to violate probation, causing amendments and

continuances, during which time the probation period continues to run. This probationary period is NOT TOLLED in juvenile, even when the juvenile absconds from our circuit and cannot be located by the probation officer.

Current Statute

Juvenile Justice, F.S. 985.439 Violation of probation or post commitment probation.

Proposed Amendment

Add the following language to F.S. s. 985.439:

(2) Upon the filing of an affidavit alleging a violation of probation and following the issuance of a custody order for such violation, or a notice to appear under this section, the probationary period is tolled until the court enters a ruling on the violation. Notwithstanding the tolling of probation, the court shall retain jurisdiction over the juvenile for any violation of the conditions of probation that is alleged to have occurred during the tolling period. The probation officer is permitted to continue to supervise the juvenile who remains available to the officer for supervision. The court will maintain jurisdiction until the juvenile reaches the age of 19 or 21 pursuant to s. 985.0301.”

1.B. JUVENILE SEALING AND EXPUNGEMENT

Need for Amendment

Currently, Florida Statutes do not differentiate the sealing or expunction of an individual’s juvenile criminal history from an adult criminal history. The proposed amendment would allow a person to receive one sealing or expunction of a juvenile criminal history, as well as and one sealing or expunction of an adult criminal history, so long as they meet all other currently legislated eligibility requirements.

Proposed Amendment

943.0585 Court-ordered expunction of criminal history records.—

(g) The person has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (h) and the record is otherwise eligible for expunction, with the exception of one prior juvenile sealing or expunction which is permissible under this subsection.