

1                                   A bill to be entitled  
 2           An act relating to prosecution of juveniles; amending  
 3           s. 985.557, F.S.; revising the age-based criteria and  
 4           the offenses for which the discretionary direct file  
 5           of an information against a child may be made in adult  
 6           court; prohibiting the filing of an information on a  
 7           child otherwise eligible if it is the child's first  
 8           offense unless there are compelling reasons; requiring  
 9           such reasons to be stated in writing; providing  
 10          criteria for a state attorney to determine whether to  
 11          file an information; requiring a state attorney to  
 12          file a written explanation when an information is  
 13          filed; providing criteria for consideration of a  
 14          child's request to an adult court to return a criminal  
 15          case to the juvenile justice system; providing an  
 16          effective date.

17  
 18   Be It Enacted by the Legislature of the State of Florida:

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 20           Section 1. Subsection (1) of section 985.557, Florida  
 21   Statutes, is amended, subsection (4) is renumbered as subsection  
 22   (6) and amended, and new subsections (4) and (5) are added to  
 23   that section, to read:

24           985.557 Direct filing of an information; discretionary and  
 25   mandatory criteria.—

26           (1) DISCRETIONARY DIRECT FILE.—

27           (a) With respect to any child who was 14 ~~or 15~~ years of  
 28   age or older at the time the alleged offense was committed, the

29 | state attorney may file an information when in the state  
 30 | attorney's judgment and discretion the public interest requires  
 31 | that adult sanctions be considered or imposed and when the  
 32 | offense charged is for the commission of, attempt to commit, or  
 33 | conspiracy to commit:

- 34 |       1. Arson;
- 35 |       2. Sexual battery;
- 36 |       3. Robbery;
- 37 |       4. Kidnapping;
- 38 |       5. Aggravated child abuse;
- 39 |       6. Aggravated assault;
- 40 |       7. Aggravated stalking;
- 41 |       8. Murder;
- 42 |       9. Manslaughter;
- 43 |       10. Unlawful throwing, placing, or discharging of a  
 44 | destructive device or bomb;
- 45 |       11. Armed burglary in violation of s. 810.02(2)(b) or  
 46 | specified burglary of a dwelling or structure in violation of s.  
 47 | 810.02(2)(c), or burglary with an assault or battery in  
 48 | violation of s. 810.02(2)(a);
- 49 |       12. Aggravated battery;
- 50 |       13. Any lewd or lascivious offense committed upon or in  
 51 | the presence of a person less than 16 years of age;
- 52 |       14. Carrying, displaying, using, threatening, or  
 53 | attempting to use a weapon or firearm during the commission of a  
 54 | felony;
- 55 |       ~~15. Grand theft in violation of s. 812.014(2)(a);~~
- 56 |       15.16. Possessing or discharging any weapon or firearm on

57 | school property in violation of s. 790.115;  
 58 | ~~16.17.~~ Home invasion robbery;  
 59 | ~~17.18.~~ Carjacking; or  
 60 | ~~18.19.~~ Grand theft of a motor vehicle in violation of s.  
 61 | 812.014(2)(c)6. or grand theft of a motor vehicle valued at  
 62 | \$20,000 or more in violation of s. 812.014(2)(b) if the child  
 63 | has a previous adjudication for grand theft of a motor vehicle  
 64 | in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

65 | (b) The state may not file an information on a child  
 66 | otherwise eligible under this subsection if it is the child's  
 67 | first offense unless there are compelling reasons, which the  
 68 | state shall set out in writing ~~With respect to any child who was~~  
 69 | ~~16 or 17 years of age at the time the alleged offense was~~  
 70 | ~~committed, the state attorney may file an information when in~~  
 71 | ~~the state attorney's judgment and discretion the public interest~~  
 72 | ~~requires that adult sanctions be considered or imposed. However,~~  
 73 | ~~the state attorney may not file an information on a child~~  
 74 | ~~charged with a misdemeanor, unless the child has had at least~~  
 75 | ~~two previous adjudications or adjudications withheld for~~  
 76 | ~~delinquent acts, one of which involved an offense classified as~~  
 77 | ~~a felony under state law.~~

78 | (4) DIRECT-FILE CRITERIA.-

79 | (a) When a child is eligible to have an information filed  
 80 | by the state attorney under subsection (1), the state attorney  
 81 | shall use the following criteria to determine whether to file an  
 82 | information:

- 83 | 1. The seriousness of the alleged offense and whether  
 84 | transferring the child is necessary for protection of the

85 | community, including:

86 |     a. The recommendation of the department, through review

87 | and consideration of the recommendations of the department's

88 | caseworker.

89 |     b. The probable cause as found in the report, affidavit,

90 | or complaint, including:

91 |         (I) Whether the alleged offense was committed in an

92 | aggressive, violent, premeditated, or willful manner.

93 |         (II) Whether the alleged offense was against persons or

94 | against property, with greater weight being given to offenses

95 | against persons, especially if personal injury resulted.

96 |     c. The sophistication and maturity of the child.

97 |     2. The record and previous history of the child,

98 | including:

99 |         a. Previous contacts with the department, the Department

100 | of Corrections, other law enforcement agencies, and the courts.

101 |         b. Prior periods of probation.

102 |         c. Prior adjudications that the child committed a

103 | delinquent act or violation of law, with greater weight being

104 | given if the child has previously been found by a court to have

105 | committed a delinquent act or violation of law involving

106 | violence to persons.

107 |         d. Prior commitments to institutions of the department,

108 | the Department of Corrections, or agencies under contract with

109 | either department.

110 |         e. Patterns of criminality or patterns of escalation.

111 |     3. The prospects for adequate protection of the public and

112 | the likelihood of reasonable rehabilitation of the child, if the

113 child is found to have committed the alleged offense, by the use  
114 of procedures, services, and facilities currently available to  
115 the juvenile court.

116 4. Cost-effective alternatives available to divert the  
117 child from the criminal and juvenile justice systems and offer  
118 rehabilitative services for the child.

119 (b) If the state attorney files an information against a  
120 child under this section, the state attorney shall file with the  
121 court his or her written explanation, addressing the factors  
122 listed in paragraph (a), as to why the child should be  
123 transferred for criminal prosecution.

124 (5) REVERSE WAIVER.—Any child over whom the adult court  
125 has obtained original jurisdiction may request, in writing, a  
126 hearing to determine whether the child shall remain in adult  
127 court. The adult court shall retain jurisdiction unless the  
128 child proves by a preponderance of evidence all of the  
129 following:

130 (a) The child could obtain services available in the  
131 juvenile justice system which could lessen the possibility of  
132 the child reoffending in the future.

133 (b) The child's best interests would be served by  
134 prosecuting the case in juvenile court.

135 (c) The child could receive juvenile sanctions that would  
136 provide adequate safety and protection for the community.

137 (d) The child is not charged with a felony that is  
138 punishable by death or life imprisonment.

139 (e) The child has not previously been convicted and  
140 sentenced as an adult.

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141 |        ~~(6)-(4)~~ CHARGES INCLUDED.—An information filed pursuant to  
142 | this section may include all charges that are based on the same  
143 | act, criminal episode, or transaction as the primary offenses.  
144 |        Section 2. This act shall take effect July 1, 2013.