

Tab 1	SB 154 by Thurston (CO-INTRODUCERS) Garcia; (Similar to H 0039) Autism Awareness Training for Law Enforcement Officers						
330190	A	S	RCS	CJ, Thurston	Delete L.16 - 19:	02/06 05:21 PM	
Tab 2	SB 192 by Powell (CO-INTRODUCERS) Rouson; Juvenile Justice						
206646	D	S	RCS	CJ, Powell	Delete everything after	02/06 05:22 PM	
Tab 3	SB 280 by Bracy (CO-INTRODUCERS) Bradley; (Similar to H 0527) Sentencing for Capital Felonies						
534722	A	S	WD	CJ, Bracy	btw L.48 - 49:	02/06 05:24 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Bracy, Chair
Senator Baxley, Vice Chair

MEETING DATE: Monday, February 6, 2017
TIME: 4:00—6:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Bracy, Chair; Senator Baxley, Vice Chair; Senators Bean, Bradley, Brandes, Clemens, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 154 Thurston (Similar H 39, Compare H 219)	Autism Awareness Training for Law Enforcement Officers; Requiring the Department of Law Enforcement to establish an online continued employment training component relating to autism spectrum disorder, etc. CJ 02/06/2017 Fav/CS CF ACJ AP	Fav/CS Yeas 6 Nays 0
2	SB 192 Powell	Juvenile Justice; Revising the circumstances under which a state attorney may file an information when a child of a certain age range commits or attempts to commit specified crimes; prohibiting the transfer of a child to adult court under certain circumstances based on the child's competency; providing specified sanctions to which a juvenile may be sentenced, etc. CJ 01/23/2017 Temporarily Postponed CJ 02/06/2017 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 3
3	SB 280 Bracy (Similar H 527)	Sentencing for Capital Felonies; Requiring jury unanimity rather than a certain number of jurors for a sentencing recommendation of death, etc. CJ 02/06/2017 Favorable RC	Favorable Yeas 6 Nays 0

Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, www.flsenate.gov.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 154

INTRODUCER: Criminal Justice Committee and Senators Thurston and Garcia

SUBJECT: Autism Awareness Training for Law Enforcement Officers

DATE: February 7, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	Fav/CS
2.			CF	
3.			ACJ	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 154 requires the Florida Department of Law Enforcement (FDLE) to establish a continued employment training component relating to autism spectrum disorder (ASD). Instruction must include, but is not limited to, instruction on the recognition of the symptoms and idiosyncrasies of an individual on the autism disorder spectrum and appropriate responses to a person exhibiting such symptoms and idiosyncrasies. Completion of the training component may count toward the 40 hours of required instruction for continued employment or appointment as a law enforcement officer.

The FDLE states that it is currently developing a course that will address the symptoms of ASD, how to respond to it, and who to call for assistance. This course will be available to all Florida law enforcement officers in the Spring of 2017, and completion of this course may count toward an officer's mandatory retraining credit. The FDLE believes this course should meet the objectives of the bill. The FDLE states the estimated total costs of developing this course (\$10,548) will be absorbed by the FDLE. Course development is being funded by the Criminal Justice Standards and Training Trust Fund.

II. Present Situation:

Autism Spectrum Disorder

The Centers for Disease Control (CDC) estimates that one in 68 children have been identified with autism spectrum disorder.¹ The CDC defines “autism spectrum disorder” as a developmental disability that can cause significant social, communication, and behavioral challenges. Though there is nothing about how ASD people look that sets them apart from other people, the CDC states that people with ASD may communicate, interact, behave, and learn in ways that are different from most other people. The range of abilities of people with ASD can span from gifted to severely challenged.²

Though formerly diagnosed separately, autistic disorder, pervasive developmental disorder, and Asperger syndrome are now included in the diagnosis of ASD.³

The following definitions are codified in Florida law:

- “Autism” is a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.⁴
- “Developmental disability” is a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.⁵
- “Autism spectrum disorder” is any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:
 - Autistic disorder;
 - Asperger’s syndrome; and
 - Pervasive developmental disorder not otherwise specified.⁶

Law Enforcement Training on Autism Spectrum Disorder

In order to maintain certification as a law enforcement officer, the officer must satisfy the continuing training and education requirements of s. 943.135, F.S., which requires officers, as a condition of continued employment or appointment, to receive continuing training or education

¹ “Autism Spectrum Disorder (ASD), Autism and Developmental Disabilities Monitoring (ADDM) Network,” National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, available at <http://www.cdc.gov/ncbddd/autism/addm.html> (last visited on January 23, 2017). Data is from the Autism and Developmental Disabilities Monitoring Network.

² “Autism Spectrum Disorder (ASD), Facts about ASD,” National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, available at <http://www.cdc.gov/ncbddd/autism/facts.html> (last visited on January 23, 2017).

³ *Id.*

⁴ Section 393.063(5), F.S.

⁵ Section 393.063(12), F.S.

⁶ Sections 627.6686(2)(b) and 641.31098(2)(b), F.S.

at the rate of 40 hours every 4 years. The officer's employing agency⁷ must document that the continuing training or education is job-related and consistent with the needs of the employing agency, and report completion of the training to the Criminal Justice Standards and Training Commission (CJSTC) within the FDLE.⁸

The CJSTC does not currently offer specific post-basic training on ASD. Employing agencies that want to offer ASD training may seek such training directly from vendors, such as CIT International, or from CJSTC-certified training schools (contracting with vendors). CJSTC-certified training schools receive funding each fiscal year to provide post-basic training to officers at no charge.⁹ Additionally, ASD training is currently provided in the Crisis Intervention Team Training (CIT) program ("Memphis Model"), a law enforcement-based crisis intervention team training program,¹⁰ which is facilitated by the Florida Sheriffs Association.¹¹

The topic of ASD is included in two sections of the Florida Law Enforcement Academy basic recruit curriculum:

- Chapter 3 (Interactions in a Diverse Community), Unit 2 (Communicating in a Diverse Society), Lesson 3 (Developmental Disabilities); and
- Chapter 6 (Calls for Service), Unit 6 (Responding to a Person in Crisis), Lesson 2 (Intervention and Referral).

⁷ "Employing agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility. Section 943.10(4), F.S.

⁸ The CJSTC is a 19-member commission composed of law enforcement and correctional officers and officials, a state and county correctional institution administrator, and a state resident. Section 943.11, F.S. Its duties include, but are not limited to, "creating entry-level curricula and certification testing for criminal justice officers in Florida, establishing minimum standards for employment and certification, and revoking the certification of officers who fail to maintain these minimum standards of conduct." "Overview," Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/cms/CJSTC/Overview.aspx> (last visited on January 23, 2017), and s. 943.12, F.S. Most of the information in this section of the analysis regarding law enforcement training on ASD is from the 2017 FDLE Legislative Bill Analysis (SB 154), dated December 20, 2017, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This document is further referenced in this analysis as "FDLE Analysis." This section of the analysis also incorporates additional information provided by the FDLE via phone and e-mail communications (on file with the Senate Committee on Criminal Justice).

⁹ Currently, FDLE/CJSTC is providing more than \$5.1 million dollars to the training schools, which equates to \$67 per officer. The training schools are provided quarterly disbursements and provide training that meets local needs in accordance with CJSTC rules.

¹⁰ The CIT program ("Memphis Model") is a crisis intervention team training program that was created in Memphis, Tennessee, in the late 1980's to provide "a collaborative approach to safely and effectively address the needs of persons with mental illnesses, link them to appropriate services, and divert them from the criminal justice system if appropriate." Watson, Amy C. and Fulambarker, Anjali J. "The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners," *Best Pract Ment Health*. 2012 Dec; 8(2): 71. This article is available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3769782/> (last visited on January 23, 2017). The model includes "specialized training for a select group of officers that volunteer to become CIT officers," but also includes "an organizational and community intervention that involves changes in police department procedures as well as collaboration with mental health providers and other community stakeholders." *Id.* "CIT curriculums may also include content on developmental disabilities, older adult issues, trauma and excited delirium." *Id.*

¹¹ During the 2015 Regular Session, the Attorney General's Office (through the Department of Legal Affairs) was appropriated recurring funding for three fiscal years to contract with the Florida Sheriffs Association to provide this CIT program training statewide. According to the FDLE, if state funding is not appropriated beyond FY 2017-18, ASD training will still be available for Florida law enforcement agencies from vendors and the CJSTC-certified training schools.

There is no set number of training hours specifically for autism spectrum disorder. For the purpose of reference, Chapter 3 (Interactions in a Diverse Community) is 40 classroom hours and Chapter 6 (Calls for Service) is 36 classroom hours. Instructors for each of the referenced chapters are given resources such as videos and links to informational websites to aid classroom instruction. An instructor guide is provided to all instructors that, along with the required activities, includes suggested activities. Examples of suggested activities are reviewing websites such as floridaautismcenter.info, florida-card.org, and autismfl.com, reviewing case law, and inviting a guest speaker from the Autism Society or a member of the Exceptional Student Education Program (ESE).

The FDLE's Criminal Justice Professionalism Division¹² is developing a course that will address the symptoms of ASD, how to respond to persons with ASD, and who to call for assistance in responding to persons with ASD. The course is expected to be available to officers in Spring 2017.

III. Effect of Proposed Changes:

The bill creates s. 943.1727, F.S., which requires the FDLE to establish a continued employment training component relating to autism spectrum disorder as defined in s. 627.6686, F.S.¹³ Instruction must include, but is not limited to, instruction on the recognition of the symptoms and idiosyncrasies of an individual on the autism disorder spectrum and appropriate responses to a person exhibiting such symptoms and idiosyncrasies. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135, F.S.

The bill takes effect on October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹² The Criminal Justice Professionalism Division provides staff support to the Criminal Justice Standards & Training Commission (CJSTC), the Florida Medical Examiners Commission, and the Florida Accreditation Office. It is also responsible for the FDLE Criminal Justice Executive Institute, the Bureau of Professional Development, the Florida Alcohol Testing Program, the Florida Drug Abuse Resistance Education (D.A.R.E.) Program, and FDLE member training. "Overview," Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/cms/CJSTC/Overview.aspx> (last visited on January 23, 2017).

¹³ Section 627.6686(2)(b), F.S., defines "autism spectrum disorder" as any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association: autistic disorder; Asperger's syndrome; and pervasive developmental disorder not otherwise specified.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the FDLE to establish a continued employment training component relating to autism spectrum disorder. The FDLE states that it is currently developing a course that will address the symptoms of ASD, how to respond to it, and who to call for assistance. This course will be available to all Florida law enforcement officers in the Spring of 2017, and completion of this course may count toward an officer's mandatory retraining credit. The FDLE believes this course should meet the objectives of the bill. The FDLE states the estimated total costs of developing this course (\$10,548) will be absorbed by the FDLE. Course development is being funded by the Criminal Justice Standards and Training Trust Fund.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.1727 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 6, 2017:

The Committee Substitute:

- Deletes reference to the term “online” so that continued employment training relating to autism spectrum disorder may be delivered by any appropriate means.

¹⁴ FDLE Analysis and additional information provided by the FDLE via phone and e-mail communications (on file with the Senate Committee on Criminal Justice).

- Defines the term “autism spectrum disorder” by reference to the definition of that term in s. 627.6686, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.



330190

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 16 - 19

and insert:

943.1727 Continued employment training relating to autism spectrum disorder.—The department shall establish a continued employment training component relating to autism spectrum disorder as defined in s. 627.6686. The training component shall include, but need not be limited to,



330190

11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 Delete line 5

14 and insert:

15 establish a continued employment training

By Senator Thurston

33-00320-17

2017154__

1 A bill to be entitled
2 An act relating to autism awareness training for law
3 enforcement officers; creating s. 943.1727, F.S.;
4 requiring the Department of Law Enforcement to
5 establish an online continued employment training
6 component relating to autism spectrum disorder;
7 specifying instruction to be included in the training
8 component; providing that completion of the training
9 may count toward continued employment instruction
10 requirements; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 943.1727, Florida Statutes, is created
15 to read:

16 ~~943.1727 Continued employment training relating to autism.-~~
17 The department shall establish an online continued employment
18 training component relating to autism spectrum disorder. The
19 training component must include, but need not be limited to,
20 instruction on the recognition of the symptoms and
21 idiosyncrasies of an individual on the autism disorder spectrum
22 and appropriate responses to a person exhibiting such symptoms
23 and idiosyncrasies. Completion of the training component may
24 count toward the 40 hours of instruction for continued
25 employment or appointment as a law enforcement officer required
26 under s. 943.135.

27 Section 2. This act shall take effect October 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/17

Meeting Date

SB 154

Bill Number (if applicable)

Topic Autism Awareness Training for Law Enforcement Officers

Amendment Barcode (if applicable)

Name Carla Laroche

Job Title Law Fellow

Address PO Box 10788

Phone

Street

Tallahassee

FL

32302

City

State

Zip

Email

Carla.Laroche@sp/center.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/2017

Meeting Date

154

Bill Number (if applicable)

Topic Autism Awareness Training for LEOs

Amendment Barcode (if applicable)

Name Matt Pickett

Job Title Lobbyist

Address 300 East Brevard St.
Street

Phone _____

Tallahassee FL 32307
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Police Benevolent Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

6 Feb 17

Meeting Date

154

HB 16A

Bill Number (if applicable)

Topic Autism Training

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 209 S. Monroe St., Ste. 201

Phone 850.510.9922

Street

Tall

City

FL

State

32301

Zip

Email barney@smart

justicealliance.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

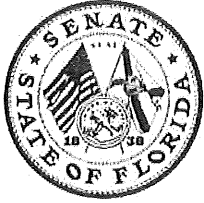
Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



The Florida Senate

Committee Agenda Request

To: Senator Randolph Bracy, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 20, 2017

I respectfully request that **Senate Bill #154**, relating to Autism Awareness Training for Law Enforcement Officers, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

Perry E. Thurston, Jr.

Senator Perry E. Thurston, Jr.
Florida Senate, District 33

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 192

INTRODUCER: Criminal Justice Committee and Senators Powell and Rouson

SUBJECT: Juvenile Justice

DATE: February 8, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 192 eliminates mandatory direct file of a child and changes the discretionary prosecution of children as adults by:

- Modifying the list of crimes that a 14 or 15 year old can be prosecuted for as an adult.
- Prohibiting the prosecution of a 16 or 17 year old as an adult for the offenses of grand theft, burglary in violation of s. 810.02(3)(b) or (4), F.S., or possession of a controlled substance.
- Providing a child transferred to adult court the opportunity to request a hearing before the court to determine if his or her case should remain in adult court.
- Requiring the state attorney to document his or her decision to prosecute a child as an adult and file it with the court at the disposition of the case.

The bill also removes involuntary mandatory waiver from the judicial waiver process and provides that only a child of 14 years of age or older can be subject to an indictment by a grand jury.

The bill prohibits a child who is incompetent and has not had competency restored, or has a pending competency hearing from being transferred to adult court until his or her competency is restored.

The bill provides that a child transferred to adult court may be sentenced as an adult, a youthful offender under ch. 958, F.S., or a juvenile. The bill also modifies and adds criteria that the court

must consider when determining what type of sanctions are appropriate. The bill prohibits children convicted as adults from losing their civil rights.

The bill requires the Department of Juvenile Justice (DJJ) to collect and annually report data to the President of the Senate and Speaker of the House of Representatives regarding children who qualify for prosecution as adults. The DJJ must work with the Office of Program Policy Analysis and Government Accountability (OPPAGA) to aggregate the data and create a report.

The bill will likely reduce the number of children transferred to the adult system, thus increasing the DJJ's population. To the extent that this reduction occurs, the bill will likely result in a negative prison bed impact on the Department of Corrections and a positive residential bed impact on the DJJ. Please see V. Fiscal Impact Statement.

The bill is effective October 1, 2017.

II. Present Situation:

Transferring of a Child to Adult Court

There are three methods of transferring a child to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing an information.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. Section 985.556, F.S., provides three types of judicial waivers:

- Voluntary Waiver – the child requests to have his or her case transferred to adult court;¹
- Involuntary Discretionary Waiver – the state attorney may file a motion requesting the court to transfer any case where the child is 14 years of age or older;² and
- Involuntary Mandatory Waiver – the state attorney must request the transfer of a child 14 years of age or older if the child:
 - Has been previously adjudicated delinquent for an enumerated felony³ and the child is currently charged with a second or subsequent violent crime against a person; or
 - Was 14 years of age or older at the time of commission of a fourth or subsequent felony offense and was previously adjudicated delinquent or had adjudication withheld for three felony offenses, one or more of which involved the use or possession of a firearm or violence against a person.⁴

If the state attorney files a motion to transfer a child to adult court, the court must hold a hearing determining whether the child should be transferred.⁵ The court must consider a variety of

¹ Section 985.556(1), F.S.

² Section 985.556(2), F.S.

³ The enumerated felonies are: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; aggravated assault; or burglary with an assault or battery.

⁴ Section 985.556(3), F.S.

⁵ Section 985.556(4), F.S.

factors in determining whether transfer is appropriate.⁶ The court must provide an order specifying the reasons for its decision to impose adult sanctions.⁷

If a child is transferred to adult court by a voluntary waiver or involuntary discretionary waiver and is found to have committed the offense or a lesser included offense, the court may sentence the child as an adult, a youthful offender, or a juvenile.⁸ If the transfer was by an involuntary mandatory waiver, the court must impose adult sanctions.⁹

Indictment

Section 985.56, F.S., specifies that a child of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment by a grand jury. If the grand jury returns an indictment on the charge, the child's case must be transferred to adult court.¹⁰

If the child is found to have committed the offense punishable by death or life imprisonment, the court must sentence the child as an adult.¹¹ If the child is instead found to have committed a lesser included offense or any other offense for which he or she was indicted as part of the criminal episode, the court may sentence the child as an adult, a youthful offender, or a juvenile.¹²

Direct File

Direct file is when a state attorney files an information charging a child in adult court. Direct file under s. 985.557, F.S., can either be discretionary or mandatory. Direct file is the predominant transfer method to adult court accounting for 98 percent of the transfers each year.¹³

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with the discretion to file a case in adult court for certain juvenile cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may file an information (direct file a child) in adult court when a child is:

- 14 or 15 years of age and is charged with one of the following felony offenses:
 - Murder;
 - Manslaughter;
 - Sexual battery;
 - Robbery;

⁶ Section 985.556(4)(c), F.S. Factors include the seriousness of the offense, the sophistication and maturity of the child, the record and previous history of the child, and whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

⁷ Section 985.556(4)(e), F.S.

⁸ Section 985.565(4)(a)2., F.S.

⁹ Section 985.565(4)(a)3., F.S.

¹⁰ Section 985.56(1), F.S.

¹¹ Section 985.565(4)(a)1., F.S.

¹² Section 985.565(4)(a)1.a.-c., F.S.

¹³ *2016 Bill Analysis for SB 314 (2016)*, Department of Juvenile Justice, (September 28, 2015) (on file with the Senate Criminal Justice Committee).

- Aggravated assault;
- Aggravated child abuse;
- Arson;
- Kidnapping;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Aggravated battery;
- Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
- Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Aggravated stalking;
- Carjacking;
- Any lewd or lascivious offense committed upon or in the presence of a person less than 16;
- Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
- Specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
- Armed burglary in violation of s. 810.02(2)(b), F.S.;
- Grand theft in violation of s. 812.014(2)(a), F.S.;
- Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
- Grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.¹⁴
- 16 or 17 years of age and is charged with any felony offense;¹⁵ or
- 16 or 17 years of age and is charged with any misdemeanor, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.¹⁶

If a child transferred to adult court by discretionary direct file is found to have committed the offense or a lesser included offense, the court may sentence the child as an adult, a youthful offender, or a juvenile.¹⁷

Mandatory Direct File

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the child is:

- 16 or 17 years of age at the time of the alleged offense:
 - Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;¹⁸

¹⁴ Section 985.557(1)(a)1.-19., F.S.

¹⁵ Section 985.557(1)(b), F.S.

¹⁶ *Id.*

¹⁷ Sections 985.565(4)(a)2. and (b), F.S.

¹⁸ The enumerated felonies include: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; or aggravated assault.

- Is charged with a forcible felony¹⁹ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;²⁰ or
- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-p., F.S.,²¹ and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;²² or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.

The court has the discretion to sentence a child transferred to adult court by mandatory direct file as an adult, a youthful offender, or a juvenile if:

- The child was 16 or 17 years old at the time of the offense, the charged offense is listed in s. 775.087(2)(a)1.a.-p., F.S., and during the commission of the offense the child actually possessed or discharged a firearm or destructive device; or
- The charged offense involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.²³

However, the court must impose adult sanctions for a child transferred to adult court by mandatory direct file who was 16 or 17 years old at the time of the offense and:

- Is charged with committing a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony; or
- Is charged with committing a forcible felony and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other.²⁴

¹⁹ Section 776.08, F.S., defines “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

²⁰ Section 985.557(2)(b), F.S., provides that this provision does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the child in adult court.

²¹ The offenses include murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.

²² The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

²³ Section 985.565(4)(a)2., F.S.

²⁴ Section 985.565(4)(a)3., F.S.

Imposing Adult or Juvenile Sanctions

Judges often have discretion to impose adult or juvenile sanctions when a child is transferred to adult court and found to have committed an offense. In determining whether adult or juvenile sanctions are appropriate the judge must consider the following factors:

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;²⁵
- The sophistication and maturity of the offender;
- The record and previous history of the offender including:
 - Previous contacts with the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the former Department of Health and Rehabilitative Services (HRS), the Department of Children and Families (DCF), law enforcement agencies, and the courts;
 - Prior periods of probation;
 - Prior adjudications that the offender committed a delinquent act or violation of law as a child; and
 - Prior commitments to the DJJ, the former HRS, the DCF, or other facilities or institutions;
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to the DJJ services and facilities;
- Whether the DJJ has appropriate programs, facilities, and services immediately available; and
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than juvenile sanctions.²⁶

If juvenile sanctions are imposed, the court must adjudge the child to have committed a delinquent act²⁷ and may:

- Place the child on probation with the DJJ for an indeterminate period of time until he or she reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the child to the DJJ for treatment in an appropriate program for an indeterminate period of time until he or she reaches 21 years of age or sooner if discharged by the DJJ;²⁸ or

²⁵ Greater weight is given to offenses against persons, especially if personal injury resulted.

²⁶ Section 985.565(1)(b), F.S.

²⁷ Section 985.565(4)(b), F.S. Adjudication of delinquency is not deemed a conviction, nor does it operate to impose any of the civil disabilities ordinarily resulting from a conviction.

²⁸ The DJJ must notify the court of its intent to discharge the child from the commitment program no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

- Order, if the court determines not to impose youthful offender or adult sanctions, any of the following:
 - Probation and postcommitment probation or community service under s. 985.435, F.S.;
 - Restitution under s. 985.437, F.S.;
 - Violation of probation or postcommitment probation under s. 985.439, F.S.;
 - Commitment under s. 985.441, F.S.;
 - Work program liability and remuneration under s. 985.45, F.S.; and
 - Other dispositional issues under s. 985.455, F.S.²⁹

If the court imposes a juvenile sanction and the DJJ determines that the sanction is unsuitable for the child, the DJJ must return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions.³⁰

Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions.³¹

The court may not sentence a child to a combination of adult and juvenile sanctions.³²

Effect of Transferring a Child to Adult Court

If a child transferred to adult court is found to have committed the offense or a lesser included offense, the child must have any subsequent violations of law handled in adult court.³³ The court must also immediately transfer and certify all unresolved³⁴ felony cases pertaining to the child to adult court for prosecution.³⁵

If the child is acquitted of all charged offenses (or lesser included offenses) contained in the original direct filed case, all felony cases transferred to adult court as a result of the direct file case must be subject to juvenile sanctions.³⁶

Suspension of Civil Rights

The civil rights of a person are suspended in Florida upon conviction of a felony. These rights are restored by a full pardon, conditional pardon, or restoration of civil rights pursuant to s. 8, Art. IV of the State Constitution.³⁷

²⁹ Section 985.565(4)(b)1.-3., F.S.

³⁰ Section 985.565(4)(b) and (c), F.S.

³¹ Section 985.565(4)(a)4., F.S.

³² Section 985.565(4)(b), F.S.

³³ Sections 985.556(5), 985.56(4), and 985.557(3), F.S. This provision does not apply if the adult court imposes juvenile sanctions under s. 985.565, F.S.

³⁴ Unresolved cases include those which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not yet been made. *See* s. 985.557(3)(b), F.S.

³⁵ Sections 985.556(5), 985.56(4), and 985.557(3), F.S.

³⁶ *Id.*

³⁷ Section 944.292(1), F.S.

III. Effect of Proposed Changes:

Judicial Wavier (Section 2, amending s. 985.556, F.S.)

The bill eliminates involuntary mandatory waiver from the judicial wavier process. Related to hearings on transfer requests, the bill also repeals the factor which required the court to consider the desirability of the trial and disposition of the case be handled in the same court as the child's codefendants. Furthermore, the bill adds a factor to require the court to consider a child's mental development in determining whether a child is transferred to adult court.

Indictment of a Juvenile (Section 4, amending s. 985.56, F.S.)

The bill specifies that only a child of 14 years of age or older can be subject to an indictment by a grand jury.

Prosecuting Children as Adults (Direct File) (Section 3, amending s. 985.557, F.S.)

The bill eliminates mandatory direct file and modifies the discretionary prosecution of children as adults (discretionary direct file).

The bill requires the state attorney to document his or her decision to prosecute a child as an adult and file it with the court at the disposition of the case. The documentation³⁸ must include:

- Whether adult codefendants were involved with the case.
- The length of time the child spent in a detention facility or jail-awaiting disposition.
- Whether any discovery was conducted on the case at the time of the child's transfer to adult court.
- Whether the child waived the right to a trial.
- If the decision to transfer or not transfer to adult court resulted in a plea agreement, the details of the plea agreement, including previous plea offers made by the state but not accepted by the child, and any conditions placed on the plea offer.
- Whether the judge sentenced the child to a disposition other than what the prosecutor was offering in exchange for the child not being prosecuted as an adult.
- Whether the child had to waive statutory limits on secure detention in order to avoid being prosecuted as an adult, and, if available, the amount of time the child who waived secure detention limits actually spent in secure detention.

Discretionary Prosecution of Children as Adults – 14 or 15 years of age

The bill amends the following qualifying offenses that a child 14 or 15 years of age can be prosecuted for as an adult:

- Robbery if it occurs while carrying a firearm in violation of s. 812.13(3)(a), F.S.;
- Armed burglary if it occurs while there is another person in the dwelling, structure, or conveyance at the time the offender enters or remains; and
- Aggravated battery if it results in great bodily harm, permanent disability, or permanent disfigurement to a person.

³⁸ The state attorney of each judicial circuit must collect the documentation monthly and submit it to the DJJ.

The bill removes grand theft and grand theft of a motor vehicle from the list of qualifying offenses that a child 14 or 15 years of age can be prosecuted for as an adult.

Discretionary Prosecution of Children as Adults – 16 or 17 years of age

The bill prohibits the prosecution of a 16 or 17 year old as an adult for the offenses of:

- Grand theft;
- Burglary in violation of s. 810.02(3)(b) or (4), F.S.; or
- Possession of a controlled substance.

Competency Transfer Prohibitions (Section 3, amending s. 985.557, F.S., and Section 4, amending s. 985.56, F.S.)

A child eligible for discretionary prosecution as an adult or who is indicted³⁹ cannot be transferred to adult court until his or her competency is restored if he or she has:

- A pending competency hearing in juvenile court; or
- Been previously found to be incompetent to proceed.

Fitness Hearings Before a Judge (Section 3, amending s. 985.557, F.S.)

A child transferred to adult court by discretionary prosecution may request a hearing before the court to determine whether public safety would be best served by keeping the child in adult court. In making this determination, the court must consider:

- The seriousness of the offense;
- The extent of the child's alleged participation or role in the offense;
- The sophistication, maturity, and mental development of the child;
- Any prior adjudications or adjudications withheld of the child; and
- Any other consideration set forth in s. 985.556(3)(c), F.S.

Data Collection Relating to Prosecuting Children as Adults (Section 3, amending s. 985.557, F.S.)

The bill requires the DJJ, beginning March 1, 2018, to collect data regarding children who qualify to be prosecuted as adults. This data includes, but is not limited to:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence and offense;
- Prior adjudications or adjudications withheld;
- Prior periods of probation including any violations of probation;
- Previous contacts with law enforcement agencies or the courts which resulted in a civil citation, arrest, or charges being filed with the state;
- Initial charges;
- Charges at disposition;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel or had waived counsel;

³⁹ The time limits provided in s. 985.56(2), F.S., are tolled while the child is incompetent.

- Risk assessment instrument score;
- The child’s medical, mental health, substance abuse, or trauma history;
- The child’s history of mental impairment or disability-related accommodations;
- The child’s history of abuse or neglect;
- The child’s history of foster care placements, including the number of prior placements;
- Whether the child has below average intellectual functioning;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a children-in-need-of-services or families-in-need-of-services petition or dependency petition;
- Whether the child was transferred for criminal prosecution as an adult;
- The case resolution in juvenile court or adult court; and
- Information generated by the office of the state attorney in each judicial circuit under s. 985.557(1)(c)1., F.S.

Beginning March 1, 2018, the DJJ must also collect the following data on a child transferred for prosecution as an adult:

- Disposition data, including, but not limited to, whether the child received adult sanctions, juvenile sanctions, or diversion and, if sentenced to prison, the length of the prison sentence or the enhanced sentence; and
- Whether the child was previously found incompetent to proceed in juvenile court.

The DJJ must work with Office of Program Policy and Analysis and Government Accountability (OPPAGA) to generate a report analyzing the aggregate of data discussed above. Such report must be presented to the Governor, President of the Senate, and Speaker of the House by January 31, annually beginning January 31, 2019.

Additionally, the DJJ must work with the OPPAGA to analyze every juvenile case transferred to adult court from July 1, 2016, and June 30, 2017. A report is due to the Governor, President of the Senate, and Speaker of the House by January 31, 2018.

Imposing Adult or Juvenile Sanctions (Section 5, amending s. 985.565, F.S.)

The bill adds additional criteria and modifies existing criteria that the court must consider when determining whether to impose adult or juvenile sanctions.

The bill adds the following additional criteria that courts must consider:

- The extent of the child’s participation in the offense.
- The effect, if any, of familial or peer pressure on the child’s actions.
- Whether the DOC has appropriate programs, facilities, and services immediately available for the child.

The bill modifies the following existing criteria that courts must consider:

- The sophistication and maturity of the child to include:
 - The child’s age, maturity, intellectual capacity, and mental and emotional health at the time of the offense;
 - The child’s background, including his or her family, home, and community environment;

- The effect, if any, of immaturity, impetuosity, or failure to appreciate the risks and consequences on the child's participation in the offense; and
- The effect, if any, of characteristics attributable to the child's age on the child's judgment.
- The record and previous history of the child to include:
 - Previous contacts or commitments with the DOC, DJJ, the former HRS, and DCF and *the adequacy and appropriateness of the services provided to address the child's needs*;
 - Previous contacts with law enforcement agencies and the courts;
 - History of abuse, abandonment or neglect, or foster care placements; and
 - Identification of the child as having a disability or having previously received mental health services or treatment.

The bill provides that a child transferred pursuant to indictment, information (discretionary prosecution), indictment, or waiver of juvenile court jurisdiction and found to have committed a violation of law or a lesser included offense may be sentenced:

- As an adult;
- As a youthful offender under ch. 958, F.S.; or
- As a juvenile.

The DOC must make every effort to keep a child sentenced to the DOC completely separated from adult prisoners.

Suspension of Civil Rights (Section 1, amending s. 944.292, F.S.)

The bill specifies that a child convicted as an adult will not be subject to the suspension of his or her civil rights.

The bill also amends ss. 985.03 and 985.15, F.S., to reflect changes made by the bill and reenacts s. 985.514, F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted section.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is likely to reduce the number of children transferred to the adult system, thus increasing the DJJ's population. The Criminal Justice Impact Conference has not provided an estimate of the bill's impact, however to the extent that this reduction occurs, the bill will likely result in a negative prison bed impact (a decrease in the number of prison beds) on the DOC and a positive residential bed impact (an increase in the number of beds) on the DJJ.

The DJJ and the DOC have not yet submitted analyses for this bill.

However, for a similar bill filed in 2016, the DJJ's conservative estimate was that the bill would avert approximately 644 youth from direct file. Based on the average lengths of stay for each level and using current average per diem rates and current cost per youth under supervision for FY 2014-15, the DJJ estimated the fiscal impact of the bill to be a minimum of \$35.8 million annually.⁴⁰

This fiscal impact estimate did not take into consideration the need to procure additional programs and to build or procure facilities to accommodate this additional population. The DJJ current operating capacity is just over 2,100 residential beds and has a utilization rate of 92 percent. If sufficient beds were not made available, youth awaiting placement to a residential program would be housed in secure detention or in their home communities, creating a significant backlog of youth awaiting placement.⁴¹

Alternatively, the DJJ would require funding to procure additional programs and to build or procure facilities to house these youths in addition to the \$35.8 million addressed previously. Construction costs could exceed \$100 million to provide bed space sufficient for the high-risk and max-risk residential programs. The per diem rates used were based on per diems for programs that utilize the DJJ (state-owned) facilities. Per Diem rates for programs that do not utilize state-owned facilities are potentially higher.⁴²

Additionally, the bill requires the DJJ to collect additional data for review and analysis which would require modification of the Juvenile Justice Information System at an

⁴⁰ 2016 Bill Analysis for SB 314 (2016), Department of Juvenile Justice, (September 28, 2015) (on file with the Senate Criminal Justice Committee).

⁴¹ *Id.*

⁴² *Id.*

estimated cost of \$93,600. The time necessary for analysis, design, testing, and implementation could take up to 6 months to complete.⁴³

Any resources required by the OPPAGA to assist the DJJ with the annual reporting required by the bill is unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Data of the DJJ's Office of Research and Data Integrity show a downward trend in adult court transfers between FY 2010-2011 and FY 2014-2015, which exceeded the decline in felony arrests. Transfers declined 46 percent over the five-year period, while felony arrests declined 20 percent. During FY 2014-2015, a total of 1,282 individual youths were transferred to the adult court in Florida.⁴⁴

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 944.292, 985.03, 985.15, 985.556, 985.557, 985.56, and 985.565.

This bill reenacts section 985.514 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 6, 2017:

The Committee Substitute:

- Prohibits children convicted as adults from losing their civil rights.
- Removes involuntary mandatory waiver from the judicial waiver process.
- Modifies the crimes that a 14 or 15 year old can be prosecuted for as an adult.
- Excludes offenses that a 16 or 17 year old can be prosecuted for as an adult.
- Requires the state attorney to document his or her decision on whether to prosecute a child as an adult.
- Clarifies that the DOC must keep any child 14 years of age but not yet 18 years of age separate from adult prisoners.
- Provides a child transferred to adult court the opportunity to request a hearing before the court to determine if his or her case remains in adult court.
- Clarifies that a child who is incompetent and has not been restored to competency, or has a pending competency hearing cannot be transferred to adult court until his or her competency is restored.

⁴³ *Id.*

⁴⁴ *Id.*

- Clarifies that the time limits in s. 985.56(2), F.S., are tolled while the child is incompetent.
- Provides that only a child of 14 years of age or older can be subject to an indictment by a grand jury.
- Changes the effective date from July 1, 2017, to October 1, 2017.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



206646

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 944.292, Florida
Statutes, is amended to read:

944.292 Suspension of civil rights.—

(1) Upon conviction of a felony as defined in s. 10, Art. X
of the State Constitution, the civil rights of the person
convicted, except for children convicted as adults pursuant to



206646

11 s. 985.557, shall be suspended in Florida until such rights are
12 restored by a full pardon, conditional pardon, or restoration of
13 civil rights granted pursuant to s. 8, Art. IV of the State
14 Constitution.

15 Section 2. Subsections (2) through (5) of section 985.556,
16 Florida Statutes, are amended, and subsection (1) of that
17 section is republished, to read:

18 985.556 Waiver of juvenile court jurisdiction; hearing.—

19 (1) VOLUNTARY WAIVER.—The court shall transfer and certify
20 a child's criminal case for trial as an adult if the child is
21 alleged to have committed a violation of law and, prior to the
22 commencement of an adjudicatory hearing, the child, joined by a
23 parent or, in the absence of a parent, by the guardian or
24 guardian ad litem, demands in writing to be tried as an adult.
25 Once a child has been transferred for criminal prosecution
26 pursuant to a voluntary waiver hearing and has been found to
27 have committed the presenting offense or a lesser included
28 offense, the child shall be handled thereafter in every respect
29 as an adult for any subsequent violation of state law, unless
30 the court imposes juvenile sanctions under s. 985.565(4)(b).

31 (2) INVOLUNTARY DISCRETIONARY WAIVER.—~~Except as provided in~~
32 ~~subsection (3),~~ The state attorney may file a motion requesting
33 the court to transfer the child for criminal prosecution if the
34 child was 14 years of age or older at the time the alleged
35 delinquent act or violation of law was committed.

36 ~~(3) INVOLUNTARY MANDATORY WAIVER.—~~

37 ~~(a) If the child was 14 years of age or older, and if the~~
38 ~~child has been previously adjudicated delinquent for an act~~
39 ~~classified as a felony, which adjudication was for the~~



206646

40 ~~commission of, attempt to commit, or conspiracy to commit~~
41 ~~murder, sexual battery, armed or strong-armed robbery,~~
42 ~~earjacking, home invasion robbery, aggravated battery,~~
43 ~~aggravated assault, or burglary with an assault or battery, and~~
44 ~~the child is currently charged with a second or subsequent~~
45 ~~violent crime against a person; or~~

46 ~~(b) If the child was 14 years of age or older at the time~~
47 ~~of commission of a fourth or subsequent alleged felony offense~~
48 ~~and the child was previously adjudicated delinquent or had~~
49 ~~adjudication withheld for or was found to have committed, or to~~
50 ~~have attempted or conspired to commit, three offenses that are~~
51 ~~felony offenses if committed by an adult, and one or more of~~
52 ~~such felony offenses involved the use or possession of a firearm~~
53 ~~or violence against a person;~~

54
55 ~~the state attorney shall request the court to transfer and~~
56 ~~certify the child for prosecution as an adult or shall provide~~
57 ~~written reasons to the court for not making such request, or~~
58 ~~proceed under s. 985.557(1). Upon the state attorney's request,~~
59 ~~the court shall either enter an order transferring the case and~~
60 ~~certifying the case for trial as if the child were an adult or~~
61 ~~provide written reasons for not issuing such an order.~~

62 ~~(3)(4) WAIVER HEARING BEFORE A JUDGE.~~-

63 (a) Within 7 days, excluding Saturdays, Sundays, and legal
64 holidays, after the date a petition alleging that a child has
65 committed a delinquent act or violation of law has been filed,
66 or later with the approval of the court, but before an
67 adjudicatory hearing and after considering the recommendation of
68 the juvenile probation officer, the state attorney may file a



206646

69 motion requesting the court to transfer the child for criminal
70 prosecution.

71 (b) After the filing of the motion of the state attorney,
72 summonses must be issued and served in conformity with s.
73 985.319. A copy of the motion and a copy of the delinquency
74 petition, if not already served, must be attached to each
75 summons.

76 (c) The court shall conduct a hearing on all transfer
77 request motions for the purpose of determining whether a child
78 should be transferred. In making its determination, the court
79 shall consider:

80 1. The seriousness of the alleged offense to the community
81 and whether the protection of the community is best served by
82 transferring the child for adult sanctions.

83 2. Whether the alleged offense was committed in an
84 aggressive, violent, premeditated, or willful manner.

85 3. Whether the alleged offense was against persons or
86 against property, greater weight being given to offenses against
87 persons, especially if personal injury resulted.

88 4. The probable cause as found in the report, affidavit, or
89 complaint.

90 ~~5. The desirability of trial and disposition of the entire~~
91 ~~offense in one court when the child's associates in the alleged~~
92 ~~crime are adults or children who are to be tried as adults.~~

93 ~~5.6.~~ The sophistication, and maturity, and mental
94 development of the child.

95 ~~6.7.~~ The record and previous history of the child,
96 including:

97 a. Previous contacts with the department, the Department of



206646

98 Corrections, the former Department of Health and Rehabilitative
99 Services, the Department of Children and Families, other law
100 enforcement agencies, and courts;

101 b. Prior periods of probation;

102 c. Prior adjudications that the child committed a
103 delinquent act or violation of law, greater weight being given
104 if the child has previously been found by a court to have
105 committed a delinquent act or violation of law involving an
106 offense classified as a felony or has twice previously been
107 found to have committed a delinquent act or violation of law
108 involving an offense classified as a misdemeanor; and

109 d. Prior commitments to institutions.

110 ~~7.8-~~ The prospects for adequate protection of the public
111 and the likelihood of reasonable rehabilitation of the child, if
112 the child is found to have committed the alleged offense, by the
113 use of procedures, services, and facilities currently available
114 to the court.

115 (d) Prior to a hearing on the transfer request motion by
116 the state attorney, a study and report to the court relevant to
117 the factors in paragraph (c) must be made in writing by an
118 authorized agent of the department. The child and the child's
119 parents or legal guardians and counsel and the state attorney
120 shall have the right to examine these reports and to question
121 the parties responsible for them at the hearing.

122 (e) Any decision to transfer a child for criminal
123 prosecution must be in writing and include consideration of, and
124 findings of fact with respect to, all criteria in paragraph (c).
125 The court shall render an order including a specific finding of
126 fact and the reasons for a decision to impose adult sanctions.



206646

127 The order shall be reviewable on appeal under s. 985.534 and the
128 Florida Rules of Appellate Procedure.

129 (4)~~(5)~~ EFFECT OF ORDER WAIVING JURISDICTION.—

130 (a) Once a child has been transferred for criminal
131 prosecution pursuant to an involuntary waiver hearing and has
132 been found to have committed the presenting offense or a lesser
133 included offense, the child shall thereafter be handled in every
134 respect as an adult for any subsequent violation of state law,
135 unless the court imposes juvenile sanctions under s. 985.565.

136 (b) When a child is transferred for criminal prosecution as
137 an adult, the court shall immediately transfer and certify to
138 the adult circuit court all felony cases pertaining to the
139 child, for prosecution of the child as an adult, which have not
140 yet resulted in a plea of guilty or nolo contendere or in which
141 a finding of guilt has not been made. If the child is acquitted
142 of all charged offenses or lesser included offenses contained in
143 the original case transferred to adult court, all felony cases
144 that were transferred to adult court under this paragraph shall
145 be subject to the same penalties such cases were subject to
146 before being transferred to adult court.

147 Section 3. Section 985.557, Florida Statutes, is amended to
148 read:

149 985.557 Prosecuting children as adults ~~Direct filing of an~~
150 ~~information; discretionary and mandatory~~ criteria.—

151 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~
152 ~~FILE.~~—

153 (a) With respect to any child who was 14 or 15 years of age
154 at the time the alleged offense was committed, the state
155 attorney may file an information when in the state attorney's



206646

156 judgment and discretion the public interest requires that adult
157 sanctions be considered or imposed and when the offense charged
158 is for the commission of, attempt to commit, or conspiracy to
159 commit:

- 160 1. Arson;
- 161 2. Sexual battery;
- 162 3. Robbery while carrying a firearm in violation of s.
163 812.13(3) (a);
- 164 4. Kidnapping;
- 165 5. Aggravated child abuse;
- 166 6. Aggravated assault;
- 167 7. Aggravated stalking;
- 168 8. Murder;
- 169 9. Manslaughter;
- 170 10. Unlawful throwing, placing, or discharging of a
171 destructive device or bomb;
- 172 11. Armed burglary in violation of s. 810.02(2) (b) only if
173 there is another person in the dwelling, structure, or
174 conveyance at the time the offender enters or remains or
175 ~~specified burglary of a dwelling or structure in violation of s.~~
176 ~~810.02(2) (e),~~ or burglary with an assault or battery in
177 violation of s. 810.02(2) (a);
- 178 12. Aggravated battery resulting in great bodily harm,
179 permanent disability, or permanent disfigurement to a person;
- 180 13. Any lewd or lascivious offense committed upon or in the
181 presence of a person less than 16 years of age;
- 182 14. Carrying, displaying, using, threatening, or attempting
183 to use a weapon or firearm during the commission of a felony;
- 184 ~~15. Grand theft in violation of s. 812.014(2) (a);~~



206646

185 ~~15.16.~~ Possessing or discharging any weapon or firearm on
186 school property in violation of s. 790.115;

187 ~~16.17.~~ Home invasion robbery; or

188 ~~17.18.~~ Carjacking, ~~or~~

189 ~~19. Grand theft of a motor vehicle in violation of s.~~
190 ~~812.014(2)(c)6. or grand theft of a motor vehicle valued at~~
191 ~~\$20,000 or more in violation of s. 812.014(2)(b) if the child~~
192 ~~has a previous adjudication for grand theft of a motor vehicle~~
193 ~~in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).~~

194 (b) With respect to any child who was 16 or 17 years of age
195 at the time the alleged offense was committed, the state
196 attorney may file an information when in the state attorney's
197 judgment and discretion the public interest requires that adult
198 sanctions be considered or imposed, except when the offense
199 charged is for the commission of, attempt to commit, or
200 conspiracy to commit grand theft, burglary in violation of s.
201 810.02 (3)(b) or (4), or possession of a controlled substance.

202 However, the state attorney may not file an information on a
203 child charged with a misdemeanor, unless the child has had at
204 least two previous adjudications or adjudications withheld for
205 delinquent acts, one of which involved an offense classified as
206 a felony under state law.

207 (c)1. A decision under this subsection to prosecute a child
208 as an adult, or a decision not to prosecute a child eligible for
209 prosecution as an adult, shall be documented in writing by the
210 state attorney in charge of the case. The state attorney shall
211 file the document with the court at the disposition of the case
212 and include all of the following information in the written
213 decision:



206646

- 214 a. Whether adult codefendants were involved in the case.
215 b. The length of time the child spent in a detention
216 facility or jail awaiting disposition.
217 c. Whether any discovery has been conducted on the case at
218 the time of the child's transfer to adult court.
219 d. Whether the child waived the right to a trial.
220 e. If the decision to transfer or not to transfer to adult
221 court resulted in a plea agreement, the details of the plea
222 agreement, including previous plea offers made by the state but
223 not accepted by the child, and any conditions placed on the plea
224 offer.
225 f. Whether the judge sentenced the child to a disposition
226 other than what the prosecutor was offering in exchange for the
227 child not being prosecuted as an adult.
228 g. Whether the child had to waive statutory limits on
229 secure detention in order to avoid being prosecuted as an adult,
230 and, if available, the amount of time the child who waived
231 secure detention limits actually spent in secure detention.
232 2. On or before the 15th of each month, the state attorney
233 in each judicial circuit shall collect the information specified
234 in subparagraph 1. for all cases disposed of the previous month
235 and submit that documentation to the department for data
236 collection.
237 ~~(2) MANDATORY DIRECT FILE.--~~
238 ~~(a) With respect to any child who was 16 or 17 years of age~~
239 ~~at the time the alleged offense was committed, the state~~
240 ~~attorney shall file an information if the child has been~~
241 ~~previously adjudicated delinquent for an act classified as a~~
242 ~~felony, which adjudication was for the commission of, attempt to~~



206646

243 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~
244 ~~strong-armed robbery, carjacking, home-invasion robbery,~~
245 ~~aggravated battery, or aggravated assault, and the child is~~
246 ~~currently charged with a second or subsequent violent crime~~
247 ~~against a person.~~

248 ~~(b) With respect to any child 16 or 17 years of age at the~~
249 ~~time an offense classified as a forcible felony, as defined in~~
250 ~~s. 776.08, was committed, the state attorney shall file an~~
251 ~~information if the child has previously been adjudicated~~
252 ~~delinquent or had adjudication withheld for three acts~~
253 ~~classified as felonies each of which occurred at least 45 days~~
254 ~~apart from each other. This paragraph does not apply when the~~
255 ~~state attorney has good cause to believe that exceptional~~
256 ~~circumstances exist which preclude the just prosecution of the~~
257 ~~juvenile in adult court.~~

258 ~~(c) The state attorney must file an information if a child,~~
259 ~~regardless of the child's age at the time the alleged offense~~
260 ~~was committed, is alleged to have committed an act that would be~~
261 ~~a violation of law if the child were an adult, that involves~~
262 ~~stealing a motor vehicle, including, but not limited to, a~~
263 ~~violation of s. 812.133, relating to carjacking, or s.~~
264 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~
265 ~~while the child was in possession of the stolen motor vehicle~~
266 ~~the child caused serious bodily injury to or the death of a~~
267 ~~person who was not involved in the underlying offense. For~~
268 ~~purposes of this section, the driver and all willing passengers~~
269 ~~in the stolen motor vehicle at the time such serious bodily~~
270 ~~injury or death is inflicted shall also be subject to mandatory~~
271 ~~transfer to adult court. "Stolen motor vehicle," for the~~



206646

272 ~~purposes of this section, means a motor vehicle that has been~~
273 ~~the subject of any criminal wrongful taking. For purposes of~~
274 ~~this section, "willing passengers" means all willing passengers~~
275 ~~who have participated in the underlying offense.~~

276 ~~(d)1. With respect to any child who was 16 or 17 years of~~
277 ~~age at the time the alleged offense was committed, the state~~
278 ~~attorney shall file an information if the child has been charged~~
279 ~~with committing or attempting to commit an offense listed in s.~~
280 ~~775.087(2) (a)1.a.-p., and, during the commission of or attempt~~
281 ~~to commit the offense, the child:~~

282 ~~a. Actually possessed a firearm or destructive device, as~~
283 ~~those terms are defined in s. 790.001.~~

284 ~~b. Discharged a firearm or destructive device, as described~~
285 ~~in s. 775.087(2) (a)2.~~

286 ~~e. Discharged a firearm or destructive device, as described~~
287 ~~in s. 775.087(2) (a)3., and, as a result of the discharge, death~~
288 ~~or great bodily harm was inflicted upon any person.~~

289 ~~2. Upon transfer, any child who is:~~

290 ~~a. Charged under sub-subparagraph 1.a. and who has been~~
291 ~~previously adjudicated or had adjudication withheld for a~~
292 ~~forcible felony offense or any offense involving a firearm, or~~
293 ~~who has been previously placed in a residential commitment~~
294 ~~program, shall be subject to sentencing under s. 775.087(2) (a),~~
295 ~~notwithstanding s. 985.565.~~

296 ~~b. Charged under sub-subparagraph 1.b. or sub-subparagraph~~
297 ~~1.c., shall be subject to sentencing under s. 775.087(2) (a),~~
298 ~~notwithstanding s. 985.565.~~

299 ~~3. Upon transfer, any child who is charged under this~~
300 ~~paragraph, but who does not meet the requirements specified in~~



206646

301 ~~subparagraph 2., shall be sentenced under s. 985.565; however,~~
302 ~~if the court imposes a juvenile sanction, the court must commit~~
303 ~~the child to a high risk or maximum risk juvenile facility.~~

304 ~~4. This paragraph shall not apply if the state attorney has~~
305 ~~good cause to believe that exceptional circumstances exist that~~
306 ~~preclude the just prosecution of the child in adult court.~~

307 ~~(d)5.~~ The Department of Corrections shall make every
308 reasonable effort to ensure that any child who is 14 years of
309 age but has not yet reached the age of 18 and 16 or 17 years of
310 age who is convicted and sentenced under this section must be
311 ~~paragraph be~~ completely separated such that there is no physical
312 contact with adult offenders in the facility, to the extent that
313 it is consistent with chapter 958.

314 ~~(2)(3)~~ EFFECT OF PROSECUTION OF CHILDREN AS ADULTS DIRECT
315 FILE.—

316 (a) Once a child has been transferred for criminal
317 prosecution pursuant to an information and has been found to
318 have committed the presenting offense or a lesser included
319 offense, the child shall be handled thereafter in every respect
320 as if an adult for any subsequent violation of state law, unless
321 the court imposes juvenile sanctions under s. 985.565.

322 (b) When a child is transferred for criminal prosecution as
323 an adult, the court shall immediately transfer and certify to
324 the adult circuit court all felony cases pertaining to the
325 child, for prosecution of the child as an adult, which have not
326 yet resulted in a plea of guilty or nolo contendere or in which
327 a finding of guilt has not been made. If a child is acquitted of
328 all charged offenses or lesser included offenses contained in
329 the original case transferred to adult court, all felony cases



206646

330 that were transferred to adult court as a result of this
331 paragraph shall be subject to the same penalties to which such
332 cases would have been subject before being transferred to adult
333 court.

334 (c) When a child has been transferred for criminal
335 prosecution as an adult and has been found to have committed a
336 violation of state law, the disposition of the case may be made
337 under s. 985.565 and may include the enforcement of any
338 restitution ordered in any juvenile proceeding.

339 (3) FITNESS HEARING BEFORE A JUDGE.—A child who is
340 transferred to adult court under this section may request, in
341 writing, a hearing before the court to determine whether he or
342 she shall remain in adult court. The adult court, in determining
343 whether public safety would be best served by retaining
344 jurisdiction, shall consider the seriousness of the offense; the
345 extent of the child's alleged participation or role in the
346 offense; the sophistication, maturity, and mental development of
347 the child; any prior adjudications or adjudications withheld of
348 the child; and any other consideration set forth in s.
349 985.556(3)(c). The adult court may, based on these
350 considerations, transfer the case back to juvenile court.

351 (4) TRANSFER PROHIBITION.—Notwithstanding any other law, a
352 child who is eligible for prosecution as an adult and who has
353 previously been found to be incompetent but has not been
354 restored to competency by a court may not be transferred to
355 adult court for criminal prosecution until the child's
356 competency has been restored.

357 (5) DATA COLLECTION RELATING TO PROSECUTING CHILDREN AS
358 ADULTS.—



206646

359 (a) Beginning March 1, 2018, the department shall collect
360 data relating to children who qualify to be prosecuted as adults
361 under this section and s. 985.556 regardless of the outcome of
362 the case, including, but not limited to:

- 363 1. Age.
364 2. Race and ethnicity.
365 3. Gender.
366 4. Circuit and county of residence.
367 5. Circuit and county of offense.
368 6. Prior adjudications or adjudications withheld.
369 7. Prior periods of probation including any violations of
370 probation.
371 8. Previous contacts with law enforcement agencies or the
372 court which resulted in a civil citation, arrest, or charges
373 being filed with the state.
374 9. Initial charges.
375 10. Charges at disposition.
376 11. Whether child codefendants were involved who were
377 transferred to adult court.
378 12. Whether the child was represented by counsel or whether
379 the child waived counsel.
380 13. Risk assessment instrument score.
381 14. The child's medical, mental health, substance abuse, or
382 trauma history.
383 15. The child's history of mental impairment or disability-
384 related accommodations.
385 16. The child's history of abuse or neglect.
386 17. The child's history of foster care placements,
387 including the number of prior placements.



206646

388 18. Whether the child has below-average intellectual
389 functioning.

390 19. Whether the child has received mental health services
391 or treatment.

392 20. Whether the child has been the subject of a child-in-
393 need-of-services or families-in-need-of-services petition or a
394 dependency petition.

395 21. Whether the child was transferred for criminal
396 prosecution as an adult.

397 22. The case resolution in juvenile court.

398 23. The case resolution in adult court.

399 24. Information generated by the office of the state
400 attorney in each judicial circuit under subparagraph (1)(c)1.

401 (b) Beginning March 1, 2018, for a child transferred for
402 criminal prosecution as an adult, the department shall also
403 collect:

404 1. Disposition data, including, but not limited to, whether
405 the child received adult sanctions, juvenile sanctions, or
406 diversion and, if sentenced to prison, the length of the prison
407 sentence or the enhanced sentence; and

408 2. Whether the child was previously found incompetent to
409 proceed in juvenile court.

410 (c) For every juvenile case transferred between July 1,
411 2016, and June 30, 2017, the department shall work with the
412 Office of Program Policy Analysis and Government Accountability
413 to generate a report analyzing the aggregated data. The
414 department must provide this report to the Governor, the
415 President of the Senate, and the Speaker of the House of
416 Representatives by January 31, 2018.



206646

417 (d) The department must work with the Office of Program
418 Policy Analysis and Government Accountability to generate a
419 report analyzing the aggregated data under paragraphs (a) and
420 (b) on an annual basis. The department must provide this report
421 annually to the Governor, the President of the Senate, and the
422 Speaker of the House of Representatives no later than January 31
423 of the following calendar year.

424 (6)~~(4)~~ An information filed pursuant to this section may
425 include all charges that are based on the same act, criminal
426 episode, or transaction as the primary offenses.

427 Section 4. Section 985.56, Florida Statutes, is amended to
428 read:

429 985.56 Indictment of a juvenile.—

430 (1) A child 14 years of age or older ~~of any age~~ who is
431 charged with a violation of state law punishable by death or by
432 life imprisonment is subject to the jurisdiction of the court as
433 set forth in s. 985.0301(2) unless and until an indictment on
434 the charge is returned by the grand jury. When such indictment
435 is returned, the petition for delinquency, if any, must be
436 dismissed and the child must be tried and handled in every
437 respect as an adult:

438 (a) On the indicting offense punishable by death or by life
439 imprisonment; and

440 (b) On all other felonies or misdemeanors charged in the
441 indictment which are based on the same act or transaction as the
442 indicting offense punishable by death or by life imprisonment or
443 on one or more acts or transactions connected with the offense
444 punishable by death or by life imprisonment.

445 (2) An adjudicatory hearing may not be held until 21 days



206646

446 after the child is taken into custody and charged with having
447 committed an indictable offense punishable by death or by life
448 imprisonment, unless the state attorney advises the court in
449 writing that he or she does not intend to present the case to
450 the grand jury, or has presented the case to the grand jury and
451 the grand jury has not returned an indictment. If the court
452 receives such a notice from the state attorney, or if the grand
453 jury fails to act within the 21-day period, the court may
454 proceed as otherwise authorized under this part.

455 (3) Notwithstanding any other law, a child who is eligible
456 for indictment and who has a pending competency hearing in
457 juvenile court or who has been previously found to be
458 incompetent and has not been restored to competency by a court
459 may not be transferred to adult court for criminal prosecution
460 until the child's competency restored. A pending competency
461 hearing or a finding of incompetency tolls the time limits in
462 subsection (2). If the child is found to have committed the
463 offense punishable by death or by life imprisonment, the child
464 shall be sentenced as an adult. If the juvenile is not found to
465 have committed the indictable offense but is found to have
466 committed a lesser included offense or any other offense for
467 which he or she was indicted as a part of the criminal episode,
468 the court may sentence under s. 985.565.

469 (4) (a) If ~~Once~~ a child has been indicted pursuant to this
470 section and has been found to have committed any offense for
471 which he or she was indicted as a part of the criminal episode,
472 the child shall be handled thereafter in every respect as if an
473 adult for any subsequent violation of state law, unless the
474 court imposes juvenile sanctions under s. 985.565.



206646

475 (b) ~~If~~ When a child has been indicted pursuant to this
476 section, the court shall immediately transfer and certify to the
477 adult circuit court all felony cases pertaining to the child,
478 for prosecution of the child as an adult, which have not yet
479 resulted in a plea of guilty or nolo contendere or in which a
480 finding of guilt has not been made. If the child is acquitted of
481 all charged offenses or lesser included offenses contained in
482 the indictment case, all felony cases that were transferred to
483 adult court pursuant to this paragraph shall be subject to the
484 same penalties such cases were subject to before being
485 transferred to adult court.

486 Section 5. Subsection (1) and paragraphs (a) and (b) of
487 subsection (4) of section 985.565, Florida Statutes, are amended
488 to read:

489 985.565 Sentencing powers; procedures; alternatives for
490 juveniles prosecuted as adults.—

491 (1) POWERS OF DISPOSITION.—

492 (a) A child who is found to have committed a violation of
493 law may, as an alternative to adult dispositions, be committed
494 to the department for treatment in an appropriate program for
495 children outside the adult correctional system or be placed on
496 juvenile probation.

497 (b) In determining whether to impose juvenile sanctions
498 instead of adult sanctions, the court shall consider the
499 following criteria:

500 1. The seriousness of the offense to the community and
501 whether the protection of the community would be best served ~~be~~
502 ~~protected~~ by juvenile or adult sanctions.

503 2. The extent of the child's participation in the offense.



206646

504 3. The effect, if any, of familial or peer pressure on the
505 child's actions.

506 ~~4.2.~~ Whether the offense was committed in an aggressive,
507 violent, premeditated, or willful manner.

508 ~~5.3.~~ Whether the offense was against persons or against
509 property, with greater weight being given to offenses against
510 persons, especially if personal injury resulted.

511 ~~6.4.~~ The sophistication and maturity of the child,
512 including: ~~offender.~~

513 a. The child's age, maturity, intellectual capacity, and
514 mental and emotional health at the time of the offense.

515 b. The child's background, including his or her family,
516 home, and community environment.

517 c. The effect, if any, of immaturity, impetuosity, or
518 failure to appreciate the risks and consequences on the child's
519 participation in the offense.

520 d. The effect, if any, of characteristics attributable to
521 the child's age on the child's judgment.

522 ~~7.5.~~ The record and previous history of the child offender,
523 including:

524 a. Previous contacts with the Department of Corrections,
525 the Department of Juvenile Justice, the former Department of
526 Health and Rehabilitative Services, or the Department of
527 Children and Families, and the adequacy and appropriateness of
528 the services provided to address the child's needs ~~law~~
529 enforcement agencies, and the courts.

530 b. Prior periods of probation.

531 c. Prior adjudications that the offender committed a
532 delinquent act or violation of law as a child.



206646

533 d. Prior commitments to the Department of Juvenile Justice,
534 the former Department of Health and Rehabilitative Services, the
535 Department of Children and Families, or other facilities or
536 institutions, and the adequacy and appropriateness of the
537 services provided to address the child's needs.

538 e. Previous contacts with law enforcement agencies and the
539 courts.

540 f. History of abuse, abandonment or neglect, or foster care
541 placements.

542 g. Identification of the child as having a disability or
543 having previously received mental health services or treatment.

544 ~~8.6.~~ The prospects for adequate protection of the public
545 and the likelihood of deterrence and reasonable rehabilitation
546 of the offender if assigned to services and facilities of the
547 Department of Juvenile Justice.

548 ~~9.7.~~ Whether the Department of Juvenile Justice has
549 appropriate programs, facilities, and services immediately
550 available.

551 ~~10.8.~~ Whether adult sanctions would provide more
552 appropriate punishment and deterrence to further violations of
553 law than the imposition of juvenile sanctions.

554 11. Whether the Department of Corrections has appropriate
555 programs, facilities, and services immediately available.

556 (4) SENTENCING ALTERNATIVES.—

557 (a) *Adult sanctions.*—

558 ~~1. Cases prosecuted on indictment. If the child is found to~~
559 ~~have committed the offense punishable by death or life~~
560 ~~imprisonment, the child shall be sentenced as an adult. If the~~
561 ~~juvenile is not found to have committed the indictable offense~~



206646

562 ~~but is found to have committed a lesser included offense or any~~
563 ~~other offense for which he or she was indicted as a part of the~~
564 ~~criminal episode, the court may sentence as follows:~~

565 ~~a. As an adult;~~

566 ~~b. Under chapter 958; or~~

567 ~~c. As a juvenile under this section.~~

568 ~~1.2. Other cases.—~~If a child who has been transferred for
569 criminal prosecution pursuant to indictment, information, or
570 waiver of juvenile court jurisdiction is found to have committed
571 a violation of state law or a lesser included offense for which
572 he or she was charged as a part of the criminal episode, the
573 court may sentence as follows:

574 ~~a. As an adult;~~

575 ~~b. Under chapter 958; or~~

576 ~~c. As a juvenile under this section.~~

577 ~~3. Notwithstanding any other provision to the contrary, if~~
578 ~~the state attorney is required to file a motion to transfer and~~
579 ~~certify the juvenile for prosecution as an adult under s.~~
580 ~~985.556(3) and that motion is granted, or if the state attorney~~
581 ~~is required to file an information under s. 985.557(2)(a) or~~
582 ~~(b), the court must impose adult sanctions.~~

583 ~~4. Any sentence imposing adult sanctions is presumed~~
584 ~~appropriate, and the court is not required to set forth specific~~
585 ~~findings or enumerate the criteria in this subsection as any~~
586 ~~basis for its decision to impose adult sanctions.~~

587 ~~2.5.~~ When a child has been transferred for criminal
588 prosecution as an adult and has been found to have committed a
589 violation of state law, the disposition of the case may include
590 the enforcement of any restitution ordered in any juvenile



206646

591 proceeding.

592 (b) *Juvenile sanctions.* ~~For juveniles transferred to adult~~
593 ~~court but who do not qualify for such transfer under s.~~
594 ~~985.556(3) or s. 985.557(2)(a) or (b),~~ The court may impose
595 juvenile sanctions under this paragraph for juveniles
596 transferred to adult court. If juvenile sentences are imposed,
597 the court shall, under this paragraph, adjudge the child to have
598 committed a delinquent act. Adjudication of delinquency shall
599 not be deemed a conviction, nor shall it operate to impose any
600 of the civil disabilities ordinarily resulting from a
601 conviction. The court shall impose an adult sanction or a
602 juvenile sanction and may not sentence the child to a
603 combination of adult and juvenile punishments. An adult sanction
604 or a juvenile sanction may include enforcement of an order of
605 restitution or probation previously ordered in any juvenile
606 proceeding. However, if the court imposes a juvenile sanction
607 and the department determines that the sanction is unsuitable
608 for the child, the department shall return custody of the child
609 to the sentencing court for further proceedings, including the
610 imposition of adult sanctions. Upon adjudicating a child
611 delinquent under subsection (1), the court may:

612 1. Place the child in a probation program under the
613 supervision of the department for an indeterminate period of
614 time until the child reaches the age of 19 years or sooner if
615 discharged by order of the court.

616 2. Commit the child to the department for treatment in an
617 appropriate program for children for an indeterminate period of
618 time until the child is 21 or sooner if discharged by the
619 department. The department shall notify the court of its intent



206646

620 to discharge no later than 14 days prior to discharge. Failure
621 of the court to timely respond to the department's notice shall
622 be considered approval for discharge.

623 3. Order disposition under ss. 985.435, 985.437, 985.439,
624 985.441, 985.45, and 985.455 as an alternative to youthful
625 offender or adult sentencing if the court determines not to
626 impose youthful offender or adult sanctions.

627
628 It is the intent of the Legislature that the criteria and
629 guidelines in this subsection are mandatory and that a
630 determination of disposition under this subsection is subject to
631 the right of the child to appellate review under s. 985.534.

632 Section 6. Subsection (54) of section 985.03, Florida
633 Statutes, is amended to read:

634 985.03 Definitions.—As used in this chapter, the term:

635 (54) "Waiver hearing" means a hearing provided for under s.
636 985.556(3) ~~s. 985.556(4)~~.

637 Section 7. Subsection (1) of section 985.15, Florida
638 Statutes, is amended to read:

639 985.15 Filing decisions.—

640 (1) The state attorney may in all cases take action
641 independent of the action or lack of action of the juvenile
642 probation officer and shall determine the action that is in the
643 best interest of the public and the child. ~~If the child meets~~
644 ~~the criteria requiring prosecution as an adult under s. 985.556,~~
645 ~~the state attorney shall request the court to transfer and~~
646 ~~certify the child for prosecution as an adult or shall provide~~
647 ~~written reasons to the court for not making such a request. In~~
648 ~~all other cases,~~ The state attorney may:



- 649 (a) File a petition for dependency;
- 650 (b) File a petition under chapter 984;
- 651 (c) File a petition for delinquency;
- 652 (d) File a petition for delinquency with a motion to
- 653 transfer and certify the child for prosecution as an adult;
- 654 (e) File an information under s. 985.557;
- 655 (f) Refer the case to a grand jury;
- 656 (g) Refer the child to a diversionary, pretrial
- 657 intervention, arbitration, or mediation program, or to some
- 658 other treatment or care program if such program commitment is
- 659 voluntarily accepted by the child or the child's parents or
- 660 legal guardian; or
- 661 (h) Decline to file.

662 Section 8. For the purpose of incorporating the amendment
663 made by this act to section 985.565, Florida Statutes, in a
664 reference thereto, subsection (3) of section 985.514, Florida
665 Statutes, is reenacted to read:

666 985.514 Responsibility for cost of care; fees.—

667 (3) When the court under s. 985.565 orders any child
668 prosecuted as an adult to be supervised by or committed to the
669 department for treatment in any of the department's programs for
670 children, the court shall order the child's parents to pay fees
671 as provided in s. 985.039.

672 Section 9. This act shall take effect October 1, 2017.

673 ===== T I T L E A M E N D M E N T =====

674 And the title is amended as follows:

675 Delete everything before the enacting clause
676 and insert:
677



206646

678 A bill to be entitled
679 An act relating to juvenile justice; amending s.
680 944.292, F.S.; creating an exception to the suspension
681 of civil rights upon the conviction of a felony for
682 children convicted as adults; amending s. 985.556,
683 F.S.; deleting provisions requiring that a state
684 attorney request the court to transfer and certify a
685 child for prosecution as an adult under certain
686 circumstances; revising the factors that a court must
687 consider when determining whether a child should be
688 transferred to adult court; amending s. 985.557, F.S.;
689 revising the list of crimes for which children of
690 specified ages who are charged with committing,
691 attempting to commit, or conspiring to commit may have
692 an information filed against them by a state attorney;
693 requiring a state attorney to document in writing the
694 reasons for prosecuting or not prosecuting a child as
695 an adult; requiring the state attorney to file the
696 document with the court and include specified
697 information for his or her written decision; deleting
698 provisions requiring that a child be prosecuted as an
699 adult if the child committed or attempted to commit
700 specified crimes; deleting provisions relating to
701 sentencing of a child who commits or attempts to
702 commit such crimes; authorizing a child who is
703 transferred to adult court to request, in writing, a
704 hearing before the court to determine whether the
705 child remains in adult court; requiring the court to
706 make specified considerations in determining whether



206646

707 the public safety would be served by retaining
708 jurisdiction; authorizing the court to transfer a
709 child back to a juvenile court; prohibiting the
710 transfer of an eligible child to adult court if the
711 child has previously been found incompetent but has
712 not had competency restored until child's competency
713 is restored; requiring the Department of Juvenile
714 Justice, beginning on a certain date, to collect
715 specified information relating to children who qualify
716 for prosecution as adults and for children who are
717 transferred for criminal prosecution as adults;
718 requiring the department to work with the Office of
719 Program Policy Analysis and Government Accountability
720 to generate a report analyzing the data of juveniles
721 transferred for prosecution as adults during a certain
722 period; requiring the department to provide the report
723 to the Governor and the Legislature by a certain date;
724 requiring the department to work with the Office of
725 Program Policy Analysis and Government Accountability
726 to generate an annual report to include certain
727 information and provide it to the Governor and the
728 Legislature by a specified date; providing a child 14
729 years of age but who has not yet reached the age of 18
730 and is convicted and sentenced to the Department of
731 Corrections must be kept completely separated from
732 adult offenders in the facility; amending s. 985.56,
733 F.S.; limiting the age to children 14 years of age or
734 older, rather than children of any age, who are
735 subject to the jurisdiction of a court if charged with



206646

736 a violation of law punishable by death or life
737 imprisonment; prohibiting the transfer of a child to
738 adult court for prosecution if the child has a pending
739 competency hearing in juvenile court or has previously
740 been found incompetent and has not had his or her
741 competence restored by a court until the child's
742 competency is restored; providing the tolling of time
743 limits for specified purposes; making technical
744 changes; amending s. 985.565, F.S.; revising the
745 criteria to be used in determining whether to impose
746 juvenile or adult sanctions; deleting provisions
747 requiring the sentencing of children who commit
748 offenses punishable by death or life imprisonment or
749 who are found to have committed lesser included
750 offenses; conforming provisions to changes made by the
751 act; amending s. 985.03, F.S.; conforming a cross-
752 reference; amending s. 985.15, F.S.; conforming
753 provisions to changes made by the act; reenacting s.
754 985.514(3), F.S., relating to responsibility for cost
755 of care and fees, to incorporate the amendment made to
756 s. 985.565, F.S., in a reference thereto; providing an
757 effective date.

By Senator Powell

30-00292-17

2017192__

A bill to be entitled

An act relating to juvenile justice; amending s. 985.557, F.S.; revising the circumstances under which a state attorney may file an information when a child of a certain age range commits or attempts to commit specified crimes; deleting a requirement that a state attorney file an information under certain circumstances; prohibiting the transfer of a child to adult court under certain circumstances based on the child's competency; requiring the Department of Juvenile Justice to collect specified data under certain circumstances; requiring the department to provide an annual report to the Legislature; amending s. 985.56, F.S.; prohibiting the transfer of a child to adult court under certain circumstances based on the child's competency; amending s. 985.565, F.S.; providing specified sanctions to which a juvenile may be sentenced; prohibiting a sentence from exceeding the maximum term that an adult may serve for the same offense; revising the criteria to be used in determining whether to impose juvenile or adult sanctions; requiring the adult court to enter an order including specific findings of fact and the reasons for its decision; authorizing the court to consider certain reports that may assist it; providing for the examination of the reports by certain parties; revising how a child may be sanctioned under certain circumstances; removing a provision that requires a court to impose adult sanctions under certain circumstances; requiring the court to explain the basis for imposing adult sanctions; revising when juvenile sanctions may be imposed; providing criteria

Page 1 of 21

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30-00292-17

2017192__

for blended sanctions; amending s. 985.556, F.S.; conforming a cross-reference; reenacting ss. 985.15(1) and 985.265(5), F.S., relating to filing decisions and detention transfer and release, education, and adult jails, respectively, to incorporate the amendment made to s. 985.557, F.S., in references thereto; reenacting ss. 985.514(3) and 985.56(3) and (4)(a), F.S., relating to responsibility for cost of care and fees and indictment of a juvenile, respectively, to incorporate the amendment made to s. 985.565, F.S., in references thereto; reenacting s. 985.556(3) and (5)(a), F.S., relating to waiver of juvenile court jurisdiction and hearings, to incorporate the amendments made to ss. 985.557 and 985.565, F.S., in references thereto; providing an effective date.

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

Section 1. Section 985.557, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 985.557, F.S., for present text.)
985.557 Direct filing of an information.-
(1) DIRECT FILE.-

(a) With respect to a child who was 16 years of age or older and younger than 18 years of age at the time the alleged offense was committed, the state attorney may file an information if, in the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered

Page 2 of 21

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30-00292-17 2017192__

62 and the offense charged is for the commission of or attempt to
 63 commit:

64 1. Murder;
 65 2. Manslaughter;
 66 3. Sexual battery;
 67 4. Robbery;
 68 5. Aggravated assault;
 69 6. Aggravated child abuse;
 70 7. Arson;
 71 8. Kidnapping;
 72 9. Unlawful throwing, placing, or discharging of a
 73 destructive device or bomb;
 74 10. Aggravated battery;
 75 11. Carrying, displaying, using, or threatening or
 76 attempting to use a weapon or firearm in furtherance of the
 77 commission of a felony;
 78 12. Possessing or discharging a weapon or firearm on school
 79 property in violation of s. 790.115;
 80 13. Home invasion robbery;
 81 14. Aggravated stalking;
 82 15. Carjacking;
 83 16. Aggravated animal cruelty by intentional acts;
 84 17. DUI or BUI resulting in fatality, great bodily harm,
 85 permanent disability, or permanent disfigurement to a person;
 86 18. Felony DUI or BUI in violation of s. 316.193(2)(b)1. or
 87 3. or s. 327.35(2)(b)1. or 3., respectively;
 88 19. Leaving the scene of an accident resulting in fatality,
 89 great bodily harm, permanent disability, or permanent
 90 disfigurement to a person;

Page 3 of 21

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30-00292-17 2017192__

91 20. Any lewd or lascivious offense committed upon or in the
 92 presence of a person younger than 16 years of age; or
 93 21. Burglary in violation of s. 810.02(2)(a), burglary of a
 94 dwelling in violation of s. 810.02(2) or (3), or burglary in
 95 violation of s. 810.02(3)(c) or (d).
 96 (b) With respect to a child who was 14 years of age or
 97 older and younger than 16 years of age at the time the alleged
 98 offense was committed, the state attorney may file an
 99 information if, in the state attorney's judgment and discretion,
 100 the public interest requires that adult sanctions be considered
 101 and the offense charged is for the commission of or attempt to
 102 commit:

103 1. Murder;
 104 2. Manslaughter;
 105 3. Sexual battery;
 106 4. Robbery;
 107 5. Aggravated battery;
 108 6. Carjacking;
 109 7. Home invasion robbery;
 110 8. Kidnapping;
 111 9. Burglary of a dwelling or burglary in violation of s.
 112 810.02(2)(a);
 113 10. Arson; or
 114 11. Possessing or discharging any weapon or firearm on
 115 school property in violation of s. 790.115.
 116 (c) With respect to a child who was 15 years of age or
 117 older and younger than 18 years of age at the time the alleged
 118 offense was committed, the state attorney may file an
 119 information for a felony if, in the state attorney's judgment

Page 4 of 21

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30-00292-17

2017192__

120 and discretion, the public interest requires that adult
 121 sanctions be considered and the child has had a prior
 122 adjudication for an offense that would be a felony if committed
 123 by an adult.

124 (d) With respect to a child who is 17 years of age or older
 125 and younger than 18 years of age at the time the alleged offense
 126 was committed, the state attorney may file an information for a
 127 violation of s. 784.03(1)(b) if, in the state attorney's
 128 judgment and discretion, the public interest requires that adult
 129 sanctions be considered, the child has had a prior adjudication
 130 for an offense that would be a felony if committed by an adult,
 131 and the victim requests that the offense be filed in adult
 132 court.

133 (2) EFFECT OF DIRECT FILE.—

134 (a) If a child is transferred for criminal prosecution as
 135 an adult, the court must transfer and certify to the adult
 136 circuit court all felony cases pertaining to the child which
 137 have not yet resulted in a plea of guilty or nolo contendere or
 138 in which a finding of guilt has not been made. If the child is
 139 acquitted of all charged offenses or lesser included offenses
 140 contained in the original case transferred to adult court, any
 141 felony cases that were transferred to adult court under this
 142 subsection are subject to the same penalties they were subject
 143 to before their transfer.

144 (b) If a child has been transferred to adult court pursuant
 145 to this section and found to have committed the presenting
 146 offense or a lesser included offense, he or she must be treated
 147 as an adult for each subsequent violation of state law, unless
 148 the court imposes juvenile sanctions under s. 985.565.

Page 5 of 21

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30-00292-17

2017192__

149 (3) TRANSFER PROHIBITION.—Notwithstanding any other law, a
 150 child who is eligible for direct file and who has a pending
 151 competency hearing in juvenile court or has previously been
 152 found to be incompetent and has not been restored to competency
 153 by a court may not be transferred to adult court for criminal
 154 prosecution.

155 (4) DATA COLLECTION RELATING TO DIRECT FILE.—

156 (a) The department shall collect data regarding children
 157 who qualify for direct file under subsection (1), including, but
 158 not limited to:

- 159 1. Age.
- 160 2. Race and ethnicity.
- 161 3. Gender.
- 162 4. Circuit and county of residence.
- 163 5. Circuit and county of offense.
- 164 6. Prior adjudicated offenses.
- 165 7. Prior periods of probation.
- 166 8. Previous contacts with law enforcement agencies or the
 167 courts.
- 168 9. Initial charges.
- 169 10. Charges at disposition.
- 170 11. Whether adult codefendants were involved.
- 171 12. Whether child codefendants were involved who were
 172 transferred to adult court.
- 173 13. Whether the child was represented by counsel.
- 174 14. Whether the child has waived counsel.
- 175 15. Risk assessment instrument score.
- 176 16. The child's medical, mental health, substance abuse, or
 177 trauma history.

Page 6 of 21

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30-00292-17

2017192__

178 17. The child's history of abuse or neglect.
 179 18. The child's history of foster care placements,
 180 including the number of prior placements.
 181 19. Whether the child has been the subject of a children-
 182 in-need-of-services or families-in-need-of-services petition or
 183 dependency petition.
 184 20. The case resolution in juvenile court.
 185 21. The case resolution in adult court.
 186 (b) If a child is transferred for criminal prosecution as
 187 an adult, the department must also collect disposition data,
 188 including, but not limited to, whether the child received adult
 189 sanctions, juvenile sanctions, blended sanctions, or diversion
 190 and, if sentenced to prison, the length of prison sentence or
 191 enhanced sentence.
 192 (c) The department shall annually provide a report
 193 analyzing this aggregated data to the President of the Senate
 194 and the Speaker of the House of Representatives.
 195 Section 2. Subsection (5) is added to section 985.56,
 196 Florida Statutes, to read:
 197 985.56 Indictment of a juvenile.-
 198 (5) Notwithstanding any other law, a child who is eligible
 199 for indictment and who has a pending competency hearing in
 200 juvenile court or has previously been found to be incompetent
 201 and has not been restored to competency by a court may not be
 202 transferred to adult court for criminal prosecution.
 203 Section 3. Subsection (1), paragraphs (a) and (c) of
 204 subsection (3), and subsection (4) of section 985.565, Florida
 205 Statutes, are amended to read:
 206 985.565 Sentencing powers; procedures; alternatives for

Page 7 of 21

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30-00292-17

2017192__

207 juveniles prosecuted as adults.-
 208 (1) POWERS OF DISPOSITION.-
 209 (a) A child in adult court who is found to have committed a
 210 violation of law may be sentenced to adult sanctions, juvenile
 211 sanctions, or blended sanctions consisting of both juvenile and
 212 adult sanctions. The child's sentence may include a term of
 213 imprisonment, community control, probation, commitment,~~as an~~
 214 ~~alternative to adult dispositions, be committed to the~~
 215 ~~department for treatment in an appropriate program, for children~~
 216 ~~outside the adult correctional system or be placed on juvenile~~
 217 ~~probation, or any combination thereof. The sentence may also~~
 218 include any other sanction authorized by law. A sentence imposed
 219 under this section may not exceed the maximum term that an adult
 220 may serve for the same offense.
 221 (b) In determining whether to impose juvenile sanctions,
 222 ~~instead of adult sanctions, or blended sanctions,~~ the court
 223 shall consider the following criteria:
 224 1. The seriousness of the offense to the community and
 225 whether the protection of the community would be best served be
 226 ~~protected by juvenile, or adult, or blended sanctions.~~
 227 2. The extent of the child's participation in the offense.
 228 3. The effect, if any, of familial or peer pressure on the
 229 child's actions.
 230 ~~4.2-~~ Whether the offense was committed in an aggressive,
 231 violent, premeditated, or willful manner.
 232 ~~5.3-~~ Whether the offense was against persons or against
 233 property, with greater weight being given to offenses against
 234 persons, especially if personal injury resulted.
 235 ~~6.4-~~ The sophistication and maturity of the child,

Page 8 of 21

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30-00292-17

2017192__

236 ~~including: offender.~~

237 a. The child's age, maturity, intellectual capacity, and
238 mental and emotional health at the time of the offense.

239 b. The child's background, including his or her family,
240 home, and community environment.

241 c. The effect, if any, of immaturity, impetuosity, or
242 failure to appreciate the risks and consequences on the child's
243 participation in the offense.

244 d. The effect, if any, of characteristics attributable to
245 the child's age on the child's judgment.

246 ~~7.5-~~ The record and previous history of the ~~child offender,~~
247 including:

248 a. Previous contacts with the Department of Corrections,
249 the Department of Juvenile Justice, the former Department of
250 Health and Rehabilitative Services, or the Department of
251 Children and Families, and the adequacy and appropriateness of
252 the services provided to address the child's needs ~~law~~
253 ~~enforcement agencies, and the courts.~~

254 b. Prior periods of probation.

255 c. Prior adjudications that the offender committed a
256 delinquent act or violation of law as a child.

257 d. Prior commitments to the Department of Juvenile Justice,
258 the former Department of Health and Rehabilitative Services, the
259 Department of Children and Families, or other facilities or
260 institutions, and the adequacy and appropriateness of the
261 services provided to address the child's needs.

262 e. Previous contacts with law enforcement agencies and the
263 courts.

264 f. History of abuse, abandonment or neglect, or foster care

30-00292-17

2017192__

265 placements.

266 g. Identification of the child as having a disability or
267 having previously received mental health services or treatment.

268 ~~8.6-~~ The prospects for adequate protection of the public
269 and the likelihood of deterrence and reasonable rehabilitation
270 of the offender if assigned to services and facilities of the
271 Department of Juvenile Justice.

272 ~~9.7-~~ Whether the Department of Juvenile Justice has
273 appropriate programs, facilities, and services immediately
274 available.

275 ~~10.8-~~ Whether adult sanctions would provide more
276 appropriate punishment and deterrence to further violations of
277 law than the imposition of juvenile sanctions.

278 11. Whether the Department of Corrections has appropriate
279 programs, facilities, and services immediately available.

280 (c) The adult court shall enter an order under paragraph
281 (4) (b) for its sentencing decision.

282 (3) SENTENCING HEARING.—

283 (a) At the sentencing hearing the court shall receive and
284 consider a presentence investigation report by the Department of
285 Corrections regarding the suitability of the offender for
286 ~~disposition as an adult sanctions, or as a juvenile sanctions,~~
287 or blended sanctions. The presentence investigation report must
288 include a comments section prepared by the Department of
289 Juvenile Justice, with its recommendations as to disposition.
290 This report requirement may be waived by the offender.

291 (c) The court may receive and consider any other relevant
292 and material evidence, including other reports, written or oral,
293 in its effort to determine the action to be taken with regard to

30-00292-17

2017192__

294 the child, and may rely upon such evidence to the extent of its
 295 probative value even if the evidence would not be competent in
 296 an adjudicatory hearing. Reports the court may consider include,
 297 but are not limited to, prior predisposition reports,
 298 psychosocial assessments, individualized educational plans,
 299 developmental assessments, school records, abuse or neglect
 300 reports, home studies, protective investigations, and
 301 psychological or psychiatric evaluations. The child, the child's
 302 defense counsel, and the state attorney have the right to
 303 examine the reports and to question the parties responsible for
 304 the reports at the hearing.

305 (4) SENTENCING ALTERNATIVES.-

306 (a) ~~Adult Sanctions.~~-

307 ~~1. Cases prosecuted on indictment. If the child is found to~~
 308 ~~have committed the offense punishable by death or life~~
 309 ~~imprisonment, the child shall be sentenced as an adult. If the~~
 310 ~~juvenile is not found to have committed the indictable offense~~
 311 ~~but is found to have committed a lesser included offense or any~~
 312 ~~other offense for which he or she was indicted as a part of the~~
 313 ~~criminal episode, the court may sentence as follows:~~

314 a. ~~As an adult,~~

315 b. ~~Under chapter 958, or~~

316 c. ~~As a juvenile under this section.~~

317 ~~2. Other cases.~~-If a child who has been transferred to
 318 adult court for criminal prosecution pursuant to indictment,
 319 information, or waiver of juvenile court jurisdiction is found
 320 to have committed a violation of state law or a lesser included
 321 offense for which he or she was charged as a part of the
 322 criminal episode, the court may sentence as follows:

Page 11 of 21

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30-00292-17

2017192__

323 ~~1.a.~~ As an adult;
 324 ~~2.b.~~ As a youthful offender under chapter 958; ~~or~~
 325 ~~3.e.~~ As a juvenile under this section; or
 326 ~~4.~~ To a blended sanction as provided in paragraph (e).
 327 ~~3. Notwithstanding any other provision to the contrary, if~~
 328 ~~the state attorney is required to file a motion to transfer and~~
 329 ~~certify the juvenile for prosecution as an adult under s.~~
 330 ~~985.556(3) and that motion is granted, or if the state attorney~~
 331 ~~is required to file an information under s. 985.557(2)(a) or~~
 332 ~~(b), the court must impose adult sanctions.~~
 333 ~~(b)4. Findings.~~-The court must Any sentence imposing adult
 334 sanctions is presumed appropriate, and the court is not required
 335 to set forth specific findings or enumerate the criteria in
 336 paragraph (1) (b) this subsection as the any basis for its
 337 decision to impose adult or blended sanctions.
 338 ~~(c)5. Restitution.~~-If ~~When~~ a child has been transferred for
 339 criminal prosecution as an adult and ~~has been~~ found to have
 340 committed a violation of state law, the disposition of the case
 341 may include the enforcement of any restitution ordered in any
 342 juvenile proceeding.
 343 ~~(d)(b) Juvenile sanctions.~~-If juvenile sanctions For
 344 juveniles transferred to adult court but who do not qualify for
 345 such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b),
 346 the court may impose juvenile sanctions under this paragraph. If
 347 juvenile sentences are imposed, the court shall, under this
 348 paragraph, adjudge the child to have committed a delinquent act.
 349 An adjudication of delinquency may shall not be deemed a
 350 conviction and may not, nor shall it operate to impose any of
 351 the civil disabilities ordinarily resulting from a conviction.

Page 12 of 21

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30-00292-17

2017192__

352 ~~The court shall impose an adult sanction or a juvenile sanction~~
 353 ~~and may not sentence the child to a combination of adult and~~
 354 ~~juvenile punishments. An adult sanction or~~ A juvenile sanction
 355 may include enforcement of an order of restitution or probation
 356 previously ordered in any juvenile proceeding. However, if the
 357 court imposes a juvenile sanction and the department determines
 358 that the sanction is unsuitable for the child, the department
 359 shall return custody of the child to the sentencing court for
 360 further proceedings, including the imposition of adult
 361 sanctions. Upon adjudicating a child delinquent under this
 362 paragraph subsection (1), the court may:

363 1. Place the child in a probation program under the
 364 supervision of the department for an indeterminate period of
 365 time until the child reaches the age of 19 years or sooner if
 366 discharged by order of the court.

367 2. Commit the child to the department for treatment in an
 368 appropriate program for children for an indeterminate period of
 369 time until the child is 21 or sooner if discharged by the
 370 department. The department shall notify the court of its intent
 371 to discharge no later than 14 days before ~~prior to~~ discharge.
 372 Failure of the court to timely respond to the department's
 373 notice shall be considered approval for discharge.

374 3. Order disposition under ss. 985.435, 985.437, 985.439,
 375 985.441, 985.45, and 985.455 as an alternative to youthful
 376 offender or adult sentencing if the court determines not to
 377 impose youthful offender or adult sanctions.

378 (e) Blended sanctions.—If blended sanctions are imposed,
 379 the court must withhold adjudication of guilt as an adult and
 380 adjudge the child to have committed a delinquent act. An

Page 13 of 21

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30-00292-17

2017192__

381 adjudication of delinquency under this paragraph may not be
 382 deemed a conviction and may not operate to impose any of the
 383 civil disabilities ordinarily resulting from a conviction.

384 1. The court shall place the child on adult probation,
 385 youthful offender probation under chapter 958, or community
 386 control through the Department of Corrections with a special
 387 condition to successfully complete a residential commitment
 388 program with an appropriate restrictiveness level. The sentence
 389 may also include any other adult sanction authorized by law. A
 390 blended sanction may include enforcement of an order of
 391 restitution or probation previously ordered in any juvenile
 392 proceeding.

393 2. Notwithstanding any law to the contrary, the court
 394 determining the appropriate restrictiveness level for a child
 395 shall consider the recommendations of the department, the state
 396 attorney, and the child's attorney but is not bound by any such
 397 recommendation. The court may order the child's incarceration in
 398 the juvenile detention center or county jail pending placement
 399 in the residential commitment program.

400 3. The department shall notify the court and the Department
 401 of Corrections of its intent to discharge the child from the
 402 residential commitment program no later than 14 days before
 403 discharge. Failure of the court to timely respond to the
 404 department's notice shall be considered approval for discharge.

405 (f)(e) Resentencing Adult sanctions upon failure of
 406 juvenile sanctions.—If a child proves not to be suitable to a
 407 commitment program, juvenile probation program, or treatment
 408 program under paragraph (d) ~~(b)~~, the department shall provide
 409 the sentencing court with a written report outlining the basis

Page 14 of 21

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30-00292-17

2017192__

410 for its objections to the juvenile sanction and shall
 411 simultaneously provide a copy of the report to the state
 412 attorney and the defense counsel. The department shall schedule
 413 a hearing within 30 days. Upon hearing, the court may revoke the
 414 previous adjudication of delinquency, impose an adjudication of
 415 guilt, and impose any sentence ~~that which~~ it may lawfully
 416 impose, giving credit for all time spent by the child in the
 417 department. The court may also classify the child as a youthful
 418 offender under s. 958.04, if appropriate. For purposes of this
 419 paragraph, a child may be found not suitable to a commitment
 420 program, community control program, or treatment program under
 421 paragraph (d) ~~(b)~~ if the child commits a new violation of law
 422 while under juvenile sanctions, if the child commits any other
 423 violation of the conditions of juvenile sanctions, if the child
 424 is found to be noncompliant with the commitment program, or if
 425 the child's actions are otherwise determined by the court to
 426 demonstrate a failure of juvenile sanctions.

427 (g) ~~(d)~~ Further proceedings heard in adult court.—If ~~when~~ a
 428 child is sentenced to juvenile sanctions or blended sanctions,
 429 further proceedings involving those sanctions shall continue to
 430 be heard in the adult court.

431 (h) ~~(e)~~ School attendance.—If the child is attending or is
 432 eligible to attend public school and the court finds that the
 433 victim or a sibling of the victim in the case is attending or
 434 may attend the same school as the child, the court placement
 435 order shall include a finding pursuant to the proceeding
 436 described in s. 985.455(2), regardless of whether adjudication
 437 is withheld.

438

Page 15 of 21

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30-00292-17

2017192__

439 It is the intent of the Legislature that the criteria and
 440 guidelines in this subsection are mandatory and that a
 441 determination of disposition under this subsection is subject to
 442 the right of the child to appellate review under s. 985.534.

443 Section 4. Subsection (1) of section 985.556, Florida
 444 Statutes, is amended to read:

445 985.556 Waiver of juvenile court jurisdiction; hearing.—

446 (1) VOLUNTARY WAIVER.—The court shall transfer and certify
 447 a child's criminal case for trial as an adult if the child is
 448 alleged to have committed a violation of law and, before ~~prior~~
 449 ~~to~~ the commencement of an adjudicatory hearing, the child,
 450 joined by a parent or, in the absence of a parent, by the
 451 guardian or guardian ad litem, demands in writing to be tried as
 452 an adult. Once a child has been transferred for criminal
 453 prosecution pursuant to a voluntary waiver hearing and has been
 454 found to have committed the presenting offense or a lesser
 455 included offense, the child shall be handled thereafter in every
 456 respect as an adult for any subsequent violation of state law,
 457 unless the court imposes juvenile sanctions under s.
 458 985.565(4) (d) ~~s. 985.565(4) (b)~~.

459 Section 5. For the purpose of incorporating the amendment
 460 made by this act to section 985.557, Florida Statutes, in a
 461 reference thereto, subsection (1) of section 985.15, Florida
 462 Statutes, is reenacted to read:

463 985.15 Filing decisions.—

464 (1) The state attorney may in all cases take action
 465 independent of the action or lack of action of the juvenile
 466 probation officer and shall determine the action that is in the
 467 best interest of the public and the child. If the child meets

Page 16 of 21

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30-00292-17 2017192__

468 the criteria requiring prosecution as an adult under s. 985.556,
 469 the state attorney shall request the court to transfer and
 470 certify the child for prosecution as an adult or shall provide
 471 written reasons to the court for not making such a request. In
 472 all other cases, the state attorney may:

473 (a) File a petition for dependency;
 474 (b) File a petition under chapter 984;
 475 (c) File a petition for delinquency;
 476 (d) File a petition for delinquency with a motion to
 477 transfer and certify the child for prosecution as an adult;
 478 (e) File an information under s. 985.557;
 479 (f) Refer the case to a grand jury;
 480 (g) Refer the child to a diversionary, pretrial
 481 intervention, arbitration, or mediation program, or to some
 482 other treatment or care program if such program commitment is
 483 voluntarily accepted by the child or the child's parents or
 484 legal guardian; or
 485 (h) Decline to file.

486 Section 6. For the purpose of incorporating the amendment
 487 made by this act to section 985.557, Florida Statutes, in a
 488 reference thereto, subsection (5) of section 985.265, Florida
 489 Statutes, is reenacted to read:

490 985.265 Detention transfer and release; education; adult
 491 jails.-
 492 (5) The court shall order the delivery of a child to a jail
 493 or other facility intended or used for the detention of adults:
 494 (a) When the child has been transferred or indicted for
 495 criminal prosecution as an adult under part X, except that the
 496 court may not order or allow a child alleged to have committed a

30-00292-17 2017192__

497 misdemeanor who is being transferred for criminal prosecution
 498 pursuant to either s. 985.556 or s. 985.557 to be detained or
 499 held in a jail or other facility intended or used for the
 500 detention of adults; however, such child may be held temporarily
 501 in a detention facility; or
 502 (b) When a child taken into custody in this state is wanted
 503 by another jurisdiction for prosecution as an adult.
 504

505 The child shall be housed separately from adult inmates to
 506 prohibit a child from having regular contact with incarcerated
 507 adults, including trustees. "Regular contact" means sight and
 508 sound contact. Separation of children from adults shall permit
 509 no more than haphazard or accidental contact. The receiving jail
 510 or other facility shall contain a separate section for children
 511 and shall have an adequate staff to supervise and monitor the
 512 child's activities at all times. Supervision and monitoring of
 513 children includes physical observation and documented checks by
 514 jail or receiving facility supervisory personnel at intervals
 515 not to exceed 10 minutes. This subsection does not prohibit
 516 placing two or more children in the same cell. Under no
 517 circumstances shall a child be placed in the same cell with an
 518 adult.

519 Section 7. For the purpose of incorporating the amendment
 520 made by this act to section 985.565, Florida Statutes, in a
 521 reference thereto, subsection (3) of section 985.514, Florida
 522 Statutes, is reenacted to read:

523 985.514 Responsibility for cost of care; fees.-
 524 (3) When the court under s. 985.565 orders any child
 525 prosecuted as an adult to be supervised by or committed to the

30-00292-17

2017192__

526 department for treatment in any of the department's programs for
527 children, the court shall order the child's parents to pay fees
528 as provided in s. 985.039.

529 Section 8. For the purpose of incorporating the amendment
530 made by this act to section 985.565, Florida Statutes, in
531 references thereto, subsection (3) and paragraph (a) of
532 subsection (4) of section 985.56, Florida Statutes, are
533 reenacted to read:

534 985.56 Indictment of a juvenile.—

535 (3) If the child is found to have committed the offense
536 punishable by death or by life imprisonment, the child shall be
537 sentenced as an adult. If the juvenile is not found to have
538 committed the indictable offense but is found to have committed
539 a lesser included offense or any other offense for which he or
540 she was indicted as a part of the criminal episode, the court
541 may sentence under s. 985.565.

542 (4) (a) Once a child has been indicted pursuant to this
543 section and has been found to have committed any offense for
544 which he or she was indicted as a part of the criminal episode,
545 the child shall be handled thereafter in every respect as if an
546 adult for any subsequent violation of state law, unless the
547 court imposes juvenile sanctions under s. 985.565.

548 Section 9. For the purpose of incorporating the amendments
549 made by this act to sections 985.557 and 985.565, Florida

550 Statutes, in references thereto, subsection (3) and paragraph
551 (a) of subsection (5) of section 985.556, Florida Statutes, are
552 reenacted to read:

553 985.556 Waiver of juvenile court jurisdiction; hearing.—

554 (3) INVOLUNTARY MANDATORY WAIVER.—

Page 19 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30-00292-17

2017192__

555 (a) If the child was 14 years of age or older, and if the
556 child has been previously adjudicated delinquent for an act
557 classified as a felony, which adjudication was for the
558 commission of, attempt to commit, or conspiracy to commit
559 murder, sexual battery, armed or strong-armed robbery,
560 carjacking, home-invasion robbery, aggravated battery,
561 aggravated assault, or burglary with an assault or battery, and
562 the child is currently charged with a second or subsequent
563 violent crime against a person; or

564 (b) If the child was 14 years of age or older at the time
565 of commission of a fourth or subsequent alleged felony offense
566 and the child was previously adjudicated delinquent or had
567 adjudication withheld for or was found to have committed, or to
568 have attempted or conspired to commit, three offenses that are
569 felony offenses if committed by an adult, and one or more of
570 such felony offenses involved the use or possession of a firearm
571 or violence against a person;

572
573 the state attorney shall request the court to transfer and
574 certify the child for prosecution as an adult or shall provide
575 written reasons to the court for not making such request, or
576 proceed under s. 985.557(1). Upon the state attorney's request,
577 the court shall either enter an order transferring the case and
578 certifying the case for trial as if the child were an adult or
579 provide written reasons for not issuing such an order.

580 (5) EFFECT OF ORDER WAIVING JURISDICTION.—

581 (a) Once a child has been transferred for criminal
582 prosecution pursuant to an involuntary waiver hearing and has
583 been found to have committed the presenting offense or a lesser

Page 20 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30-00292-17

2017192__

584 included offense, the child shall thereafter be handled in every
585 respect as an adult for any subsequent violation of state law,
586 unless the court imposes juvenile sanctions under s. 985.565.

587 Section 10. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 6, 2017
Meeting Date

192
Bill Number (if applicable)

206646
Amendment Barcode (if applicable)

Topic Juvenile Justice

Name Hon. Rex Dimmig

Job Title Public Defender, 10th Circuit

Address 255 North Broadway

Phone 863-534-4200

Street

Bartow

FL

32830

Email dimmi_r@pd10.state.fl.us

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/17

Meeting Date

SB 192

Bill Number (if applicable)

Topic Prosecuting Children as Adults Reform

206646

Amendment Barcode (if applicable)

Name Scott McCoy

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Tallahassee

FL

State

32302

Zip

Email scott.mccoy@splcenter.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing No Place For A child Coalition

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/2017

Meeting Date

SB 192

Bill Number (if applicable)

~~206 646~~ 206 646

Amendment Barcode (if applicable)

Topic Juvenile Justice

Name Cathy Craig-Myers

Job Title Executive Director

Address 3333 W. Pensacola Street

Phone 850 671 3442

Tallahassee FL 32304

City State Zip

Email Cathy@fjja.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Juvenile Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

6 Feb 17

Meeting Date

192

Bill Number (if applicable)

206646

Amendment Barcode (if applicable)

Topic Direct File

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe St., Ste. 201

Street

Pallahassee

City

FL

State

32301

Zip

Phone 850.510.9922

Email barney@smart
justicealliance.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/17
Meeting Date

SB 192
Bill Number (if applicable)

Topic Juvenile Justice

and 206646
Amendment Barcode (if applicable)

Name Buddy Jacobs

Job Title General Counsel Fla. Prosecuting Attorneys Assoc.

Address 961687 Gateway Blvd.
Street
Fernandina Bch, FL 32034
City State Zip

Phone 904-261-3693

Email bj.jacobs@comcast.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing State Attorneys of Fla.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.6.17

Meeting Date

~~192~~ 192

Bill Number (if applicable)

Topic SB 192

206646

Amendment Barcode (if applicable)

Name Natalie Kato

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Human Rights Watch

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.6.17
Meeting Date

192
Bill Number (if applicable)

Topic SB 192

206646
Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Assoc of Criminal defense lawyers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/16

Meeting Date

192

Bill Number (if applicable)

206646

Amendment Barcode (if applicable)

Topic Juvenile Justice Direct File

Name Wansley Walters

Job Title

Address 121 N Monroe St

Street

Phone 305 333 1469

Tallahassee FL

City

State

Zip

Email WansleyW@gmail.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing Former Secretary of Florida DSS

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/17

Meeting Date

SB192

Bill Number (if applicable)

206646

Amendment Barcode (if applicable)

Topic Juvenile Justice

Name Carla Laroché

Job Title Law Fellow

Address PO Box 10788

Phone 850-521-3000

Tallahassee FL 32302
City State Zip

Email Carla.Laroché@spkcenter.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/17
Meeting Date

192
Bill Number (if applicable)

200646
Amendment Barcode (if applicable)

Topic Juvenile Justice

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Phone _____

Street

Tallahassee FL 32301

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/17

Meeting Date

SA 192

Bill Number (if applicable)

Topic Prosecuting Children vs adults reform

204646

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title Legislative Counsel

Address 4500 Biscayne Blvd, 340
Street

Phone 786-363-4436

Miami , FL
City State Zip

Email KGROSS@ACLUFL.ORG

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing ACLU OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02-06-17

Meeting Date

SB 1912

Bill Number (if applicable)

Topic Juvenile Justice

206646
Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Constituent Services

Address Magnolia DR Suite 4

Phone 850-425-2100

Street

Tallahassee FL

Email cmackin@iamforkids.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing The Children's Campaign

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-6-17

Meeting Date

SB 192

Bill Number (if applicable)

206646

Amendment Barcode (if applicable)

Topic Juvenile Justice

Name DAWN STEWARD

Job Title Legislative Liaison

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ORLANDO FL 32835

City

State

Zip

Phone 407-645-1223

dsteward@bridges

Email OFAMERICA.ORG

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Bridges of America

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/17
Meeting Date

192
Bill Number (if applicable)

206646
Amendment Barcode (if applicable)

Topic Juvenile Justice

Name Arthur Rosenberg

Job Title Attorney

Address 3000 Biscayne Blvd, #106

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Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Legal Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/17
Meeting Date

192
Bill Number (if applicable)

Topic Juvenile Justice - Prosecuting Children as Adults

06646
Amendment Barcode (if applicable)

Name Karen Woodall

Job Title _____

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Street

Phone 850-321-9386

Tallahassee FL 32301
City State Zip

Email fcsep@updo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 6, 2017

Meeting Date

192

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Hon. Rex Dimmig

Job Title Public Defender, 10th Circuit

Address 255 North Broadway

Phone 863-534-4200

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Bartow

FL

32830

Email dimmi_r@pd10.state.fl.us

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

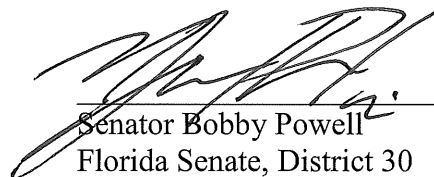
To: Senator Randolph Bracy, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 26, 2017

I respectfully request that **Senate Bill #192**, relating to Juvenile Justice, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



Senator Bobby Powell
Florida Senate, District 30

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 280

INTRODUCER: Senator Bracy

SUBJECT: Sentencing for Capital Felonies

DATE: February 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 280 amends the death penalty sentencing statutes to require jury unanimity in death penalty sentencing procedures.

In October 2016, the Florida Supreme Court determined in *Hurst v. State* that in order for the death penalty to be imposed the sentencing phase jury (if the jury was not waived) must vote unanimously for a death sentence.¹ The *Hurst v. State* ruling was applied to the 2016 death penalty sentencing statutes challenged in *Perry v. State*.²

Amending ss. 921.141 and 921.142, F.S., to require unanimity in the jury vote for death will satisfy the constitutional requirements announced by the court in the *Hurst* and *Perry* opinions.³

II. Present Situation:

2016 Death Penalty Sentencing Statute Enacted after *Hurst v. Florida*

Timothy Lee Hurst was convicted in Florida of first-degree murder for fatally stabbing his co-worker in 1998 with a box cutter.⁴ A jury recommended a sentence of death by a seven-to-five vote; thereafter, the trial court entered a sentence of death.⁵ Hurst challenged his sentence arguing before the U.S. Supreme Court that the jury was required to find specific aggravating factors and to issue a unanimous advisory death sentencing recommendation.⁶

¹ *Hurst v. State*, No. SC12-1947 (Fla., Oct. 14, 2016).

² *Perry v. State*, No. SC16-547 (Fla., Oct. 14, 2016); ch. 2016-13, L.O.F. (2016); s. 921.141, F.S. (2016).

³ *Supra*, fn.1 and fn.2.

⁴ *Hurst v. State*, 147 So.3d 435, 437 (Fla. 2014), *rev'd and remanded*, 136 S.Ct. 616 (U.S. 2016).

⁵ *Id.* at page 440.

⁶ *Id.* at page 446.

On the opening day of the 2016 Legislative Session, the U.S. Supreme Court handed down its opinion in *Hurst v. Florida*.⁷

The *Hurst v. Florida* court ruled that “the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death.”⁸ Until the *Hurst v. Florida* opinion was issued, Florida’s capital sentencing scheme had withstood challenges based on the 8th, 14th, and 6th Amendments.⁹

In an effort to comply with the U.S. Supreme Court’s opinion, the Legislature passed HB 7101 which became law on March 7, 2016.¹⁰ The new law created the following requirements for Florida’s death penalty sentencing scheme:

- The jury is required to identify each aggravating factor found to exist by a unanimous vote in order for a defendant to be eligible for a sentence of death;
- The jury is required to determine whether the aggravating factors outweigh the mitigating circumstances in reaching its sentencing recommendation;
- If at least ten of the twelve members of the jury determine that the defendant should be sentenced to death, the jury’s recommendation is a sentence of death; if fewer than ten members of the jury determine that the defendant should be sentenced to death, the jury is required to recommend a sentence of life imprisonment without the possibility of parole;
- The judge is permitted to impose a sentence of life imprisonment without the possibility of parole even if the jury recommends a sentence of death;
- The judge may not “override” the jury’s recommendation of a sentence of life imprisonment by imposing a sentence of death; and
- The prosecutor is required to provide notice to the defendant and file notice with the court when the state is seeking the death penalty. The notice must contain a list of the aggravating factors the state intends to prove.¹¹

2016 Death Penalty Statute Found Unconstitutional - The U.S. Supreme Court’s *Hurst v. Florida* Case as Applied by the Florida Supreme Court in *Hurst v. State*

The U.S. Supreme Court remanded Timothy Hurst’s case to the Florida Supreme Court. The state court issued its opinion in October 2016.¹²

Upon applying the *Hurst v. Florida* ruling to the state Hurst case, the Florida Supreme Court found the state’s 2012 statutory death penalty sentencing procedures to be unconstitutional.¹³

⁷ *Hurst v. Florida*, 136 S.Ct. 616 (U.S. 2016); 577 U.S. ____ (2016).

⁸ *Id.* at 619.

⁹ Cruel or unusual punishment, due process, and right to jury trial. *Proffitt v. Florida*, 428 U.S. 242 (1976); *Spaziano v. Florida*, 468 U.S. 447 (1984); *Hildwin v. Florida*, 490 U.S. 638 (1989).

¹⁰ Chapter 2016-13, L.O.F. (2016).

¹¹ Sections 782.04, 921.141, and 921.142, F.S. (2016).

¹² *Hurst v. State*, No. SC12-1947 (Fla., Oct. 14, 2016).

¹³ *Id.* Because *Hurst* was sentenced in 2012, the 2012 sentencing procedures statute, not the new 2016 statute, was applicable in his case on remand from the U.S. Supreme Court. The *Hurst v. State* opinion sets forth the current constitutional requirements for death penalty proceedings in Florida. The *Hurst* requirements have been applied by the Court beginning with the *Perry v. State* case which was decided on the same day as the *Hurst v. State* case. See *Perry*, *supra* fn. 2. (Note that in the *Hurst* case, the court found that Hurst was not entitled to an automatic life sentence. This is because the death penalty itself remains viable – it is only the application of the death penalty sentencing procedures that was addressed by the U.S.

The Florida Supreme Court's opinion in *Hurst v. State* was based on the Sixth Amendment, the Eighth Amendment, Florida's constitutional right to a trial by jury, and Florida jurisprudence as well.¹⁴

Specifically, the court stated: “[W]e hold that the [U.S.] Supreme Court’s decision in *Hurst v. Florida* requires that all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury.”¹⁵ The court explained all the “critical findings” that must be found unanimously by the jury as:

- The existence of each aggravating factor that has been proven beyond a reasonable doubt;
- The finding that the aggravating factors are sufficient; and
- The finding that the aggravating factors outweigh the mitigating circumstances.

Further, the court stated: “We also hold...that in order for the trial court to impose a sentence of death, *the jury’s recommended sentence of death must be unanimous.*”¹⁶

The Application of *Hurst v. State* in *Perry v. State*

The same day the Florida Supreme Court decided the *Hurst v. State* case, setting forth the constitutional requirements for death penalty sentencing procedures, the court also issued the *Perry v. State* opinion.¹⁷

In *Perry*, the court considered the question of whether the 2016 death penalty sentencing statutes (referred to by the court as “the Act”) could constitutionally apply to cases in which the underlying crime was committed prior to the effective date of the statutes.¹⁸

The court concluded that the 2016 statutes could not be applied in pending prosecutions “because the Act requires that only ten jurors, rather than all twelve, recommend a final sentence of death for death to be imposed.”¹⁹

The remaining “critical finding” provisions of the Act in s. 921.141(2), F.S., (2016), were found to pass constitutional muster as construed by the court.²⁰

The Effect of *Hurst* and *Perry* on Pending Death Penalty Trials and Sentencing Phases

As of January 15, 2017, state attorneys reported a total of 313 pending death penalty cases of which 66 were ready for trial across the twenty judicial circuits.²¹

Supreme Court in *Hurst v. Florida*. Timothy Hurst’s case was remanded by the Florida Supreme Court to the trial court for a new penalty phase proceeding. *Supra* fn. 1.)

¹⁴ *Id.* at pages 35 and 37.

¹⁵ *Id.* at page 4.

¹⁶ *Id.* (emphasis added).

¹⁷ *Perry v. State*, No. SC16-547 (Fla., Oct. 14, 2016).

¹⁸ *Id.* at page 8; ch. 2016-13, L.O.F. (2016), effective March 7, 2016.

¹⁹ *Id.*

²⁰ *Id.* at page 20. These provisions are: jury unanimity in finding the existence of each aggravating factor that has been proven beyond a reasonable doubt; the finding that the aggravating factors are sufficient; and the finding that the aggravating factors outweigh the mitigating circumstances.

²¹ Data on file with Criminal Justice Committee staff.

Because there is currently no constitutional sentencing phase procedure in place due to the lack of jury unanimity in a final recommendation for death, cases in which the state is seeking the death penalty have essentially ground to a halt.

In Clearwater, for example, one trial court determined that a trial could proceed if the court modified the jury instructions to incorporate the requirements of the *Hurst* and *Perry* opinions. The defendant sought expedited review of the trial court's decision to proceed and obtained a stay of the case.²² Meanwhile, a trial court in Ocala postponed the penalty phase of a double-murder case, apparently until there are new sentencing phase procedures in place.²³ A Pensacola prosecutor recently dismissed a murder charge against an inmate accused of beating his cellmate to death. According to news reports, the state will seek a new indictment in the case after the "Legislature's review of the death penalty."²⁴

III. Effect of Proposed Changes:

The Florida Supreme Court decided in October 2016 that without jury unanimity in a final recommendation of death, the death sentence could not constitutionally be imposed in pending cases.²⁵

The 2016 death penalty sentencing statutes, which were enacted in response to the U.S. Supreme Court's *Hurst v. Florida* opinion, require that a jury recommend a death sentence by at least a 10-2 vote.²⁶

The bill amends ss. 921.141 and 921.142, F.S., to require a unanimous vote of the jury for a recommendation of death.

This bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²² The defendant, Patrick Albert Evans, obtained a stay of the trial proceedings from the Florida Supreme Court. As of January 24, 2017, the stay remains in effect. *Patrick Albert Evans v. State*, Case No. SC16-1946 (Fla., Oct. 28, 2017); see also *Juan Rosario v. State*, Case No. SC16-2133 (Fla., December 14, 2016), consolidated with the *Evans* case.

²³ *Sentencing delayed after double-murder conviction*, Nicky Gorny, Ocala Star Banner, <http://www.ocala.com/news/20161017/sentencing-delayed-after-double-murder-conviction> (last visited December 2, 2016).

²⁴ *State waits out death penalty legislation*, Emma Kennedy, Pensacola News Journal, <http://www.pnj.com/story/news/crime/2017/01/09/state-waits-out-death-penalty-legislation/96351110/> (last visited January 10, 2017).

²⁵ *Perry v. State*, No. SC16-547 (Fla., Oct. 14, 2016); ch. 2016-13, L.O.F. (2016); s. 921.141, F.S. (2016). The *Perry* court did find, however, that the statutory provisions in ss. 921.141(2)(b) and 921.142(3)(b), F.S., could constitutionally apply in cases in which the underlying crime was committed prior to the effective date of the 2016 chapter law. Those provisions are: jury unanimity in finding the existence of each aggravating factor that has been proven beyond a reasonable doubt; the finding that the aggravating factors are sufficient; and the finding that the aggravating factors outweigh the mitigating circumstances. See also *Hurst v. State*, No. SC12-1947 (Fla., Oct. 14, 2016).

²⁶ Chapter 2016-13, L.O.F. (2016); ss. 921.141 and 921.142, F.S. (2016).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It is unlikely that this bill will have a fiscal impact to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Opinions based on Hurst and Perry indicate a pattern of case disposition.

The Florida Supreme Court has issued opinions almost weekly related to death penalty sentencing procedures, the 2016 statutes, *Hurst v. State*, and *Perry v. State* since *Hurst* and *Perry* were decided in October 2016. A review of the court's opinions indicates the following patterns:

- In cases where the defendant waived a penalty phase jury, there is no valid *Hurst* claim.²⁷
- The court will not automatically vacate a death sentence that was the product of a non-unanimous jury recommendation, but will instead conduct a harmless error review.²⁸ If the jury's recommended death sentence was the result of a vote that was less than unanimous (a *Hurst* claim), the court has determined that the sentencing error was not harmless, vacated the death sentences, and remanded the cases to the trial court for a new penalty proceeding.²⁹

²⁷ *Davis v. State*, No. SC13-1 (Fla., Nov. 10, 2016); *Wright v. State*, No.13-1213 (Fla., Nov. 23, 2016); *Knight v. State*, *Knight v. Jones*, Nos. SC13-820, SC-14-567 (Fla., Dec. 15, 2016).

²⁸ The harmless error analysis places the burden on the state, as the beneficiary of the error, to prove that there is no reasonable possibility that the error contributed to the conviction or to the sentence recommended in the sentencing proceeding. Where the Court finds that the error was not harmless the case must be remanded to "correct" the error. *State v. DiGuilio*, 491 So.2d 1129, 1138 (Fla. 1986); *Zack v. State*, 753 So.2d 9, 20 (Fla. 2000).

²⁹ *Simmons v. State*, No. SC14-2314 (Fla., Dec. 22, 2016); *Franklin v. State*, No. SC13-1632 (Fla., Nov. 23, 2016); *Johnson v. State*, No. SC14-1175 (Fla., Dec. 1, 2016); *Williams v. State*, No. SC14-814 (Fla., Jan. 19, 2017); *Armstrong v. State*, *Armstrong v. Jones*, Nos. SC14-1967, SC15-767 (Fla., Jan. 19, 2017); *Kopsho v. State*, *Kopsho v. Jones*, Nos. SC15-1256, SC15-1762 (Fla., Jan. 19, 2017); *Calloway v. State*, No. SC10-2170 (Fla., Jan. 26, 2017); *McGirth v. State*, *McGirth v. Jones*, Nos. SC15-953, SC16-341 (Fla., Jan. 26, 2017).

- Cases in which the jury’s death sentence recommendation was unanimous have been upheld.³⁰

The Florida Supreme Court has ruled on the retroactive application of *Hurst*.

On December 22, 2016, the Florida Supreme Court issued two opinions addressing whether the *Hurst v. State* decision would apply retroactively.³¹

The opinions rely upon language in the *Hurst v. Florida* opinion discussing the application of the *Ring v. Arizona* decision to Florida’s death penalty sentencing scheme.³²

It is the date of the *Ring* opinion (2002) that has become the Florida Supreme Court’s bright line for deciding *Hurst*’s retroactivity.³³ If a sentence became final prior to the *Ring* decision, the defendant is not entitled to *Hurst* relief.³⁴ If, however, the sentence became final on or after the date of the *Ring* opinion, *Hurst* applies.³⁵ For those defendants entitled to *Hurst* relief if the jury did not vote unanimously for a death sentence, based on case histories since *Hurst*, it appears those cases will be remanded for new penalty phases if the *Hurst* error was not harmless.³⁶

The Florida Public Defender Association indicated in its bill analysis that the court’s decision on the application of retroactivity would “significantly increase both the workload and associated costs of public defender offices for several years to come.”³⁷

³⁰ *Davis v. State*, No. SC11-1122 (Fla., Nov. 10, 2016); *King v. State*, No. SC14-1949 (Fla., Jan. 26, 2017). It should be noted that the court is taking into account the U.S. Supreme Court’s admonishment in *Hurst v. Florida* that the court should not substitute the jury’s recommendation for the factual findings required by the Sixth Amendment as the court conducts its harmless error review in these cases (see pages 47-48 in the *King* opinion.). Data gathered by the Clerk of the Florida Supreme Court showing jury sentencing votes in direct appeal death cases by calendar year of disposition by the court (2000 – 2016) indicates that 21% had unanimous death recommendations. See chart available on page 9, Florida Senate Bill Analysis, SB 7068 (2016); supplemental data provided by e-mail from Florida Supreme Court staff, November 30, 2016, on file with Criminal Justice Committee staff.

³¹ *Mosely v. State*, *Mosely v. Jones*, Nos. SC14-436, SC14-2108 (Fla., Dec. 22, 2016); *Asay v. State*, *Asay v. Jones*, Nos. SC16-223, SC16-102, SC16-628 (Fla., Dec. 22, 2016).

³² *Hurst v. Florida*, 136 S.Ct. 616 (U.S. 2016); 577 U.S. ____ (2016); In *Ring* the court ruled that juries rather than judges acting alone must make crucial factual determinations that subject a convicted murderer to the death penalty. The decision was clear as to its application to the Arizona death penalty sentencing scheme wherein the judge, without any input whatsoever from the jury beyond the verdict of guilty on the murder charge, made the sentencing decision. The court was not clear about whether Florida’s “hybrid” sentencing scheme was effected by the *Ring* decision. (Florida’s “hybrid” process provided for a jury recommendation of death or life from the jury, but the judge made the ultimate decision after considering the jury recommendation.) *Ring v. Arizona*, 536 U.S. 584 (2002).

³³ “[A] major development occurred in 2016, when the United States Supreme Court finally held in *Hurst v. Florida* that the ‘analysis the *Ring* Court applied to Arizona’s sentencing scheme applies equally to Florida’s.’” *Mosely v. State*, *Mosely v. Jones*, Nos. SC14-436, SC14-2108 (Fla., Dec. 22, 2016), at page 42.

³⁴ *Asay v. State*, *Asay v. Jones*, Nos. SC16-223, SC16-102, SC16-628 (Fla., Dec. 22, 2016), at page 12. Note that the ruling included a lifting of *Asay*’s stay of execution which was entered on March 2, 2016. See also *Gaskin v. State*, No. SC15-1884 (Fla., Jan. 19, 2017). A sentence becomes final on the disposition of the petition for writ of certiorari by the U.S. Supreme Court if filed, or 90 days after the Florida Supreme Court’s decision affirming a judgment and sentence becomes final if the petition for certiorari review is not filed. Rule 3.851, FLRCrP.

³⁵ *Mosely v. State*, *Mosely v. Jones*, Nos. SC14-436, SC14-2108 (Fla., Dec. 22, 2016), at page 61.

³⁶ *Supra*, fn. 29.

³⁷ 2017 Agency Bill Analysis – SB 280, Florida Public Defender Association, February 1, 2017, on file with the Criminal Justice Committee staff.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.141 and 921.142.

This bill reenacts the following sections of the Florida Statutes: 775.082, 782.04, 794.011, and 893.135.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



534722

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment (with title amendment)

Between lines 48 and 49
insert:

Section 3. The Legislature finds that the Florida Supreme Court decided in Asay v. State, No. SC16-223, SC16-102, and SC16-628, (Fla., December 22, 2016), that Hurst v. State, No. SC12-1947 (Fla., Oct. 14, 2016), will not apply in cases where the death sentence became final prior to June 24, 2002, the day the U.S. Supreme Court issued its opinion in Ring v. Arizona,



534722

11 536 U.S. 584 (2002). The Legislature finds that the court's
12 decision not to apply Hurst v. State in the cases of inmates
13 whose death sentences became final prior to June 24, 2002 will
14 result in a miscarriage of justice for those inmates. The
15 Legislature further finds that the retroactive application of
16 Hurst v. State to death row cases where the death sentence
17 became final prior to June 24, 2002 will provide a more just and
18 final resolution in those cases. Therefore, it is the intent of
19 the Legislature that Hurst v. State, No. SC12-1947 (Fla., Oct.
20 14, 2016) apply in cases in which the death sentence became
21 final prior to June 24, 2002.

22
23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 Delete line 5

26 and insert:

27 sentencing recommendation of death; making Legislative
28 findings; providing Legislative intent regarding
29 retroactive application of Hurst v. State, No. SC12-
30 1947 (Fla., Oct. 14, 2016); reenacting ss.

By Senator Bracy

11-00363-17

2017280__

A bill to be entitled

An act relating to sentencing for capital felonies; amending ss. 921.141 and 921.142, F.S.; requiring jury unanimity rather than a certain number of jurors for a sentencing recommendation of death; reenacting ss. 775.082(1)(a), 782.04(1)(b), and 794.011(2)(a), F.S., relating to the punishment for a conviction of a capital felony, procedures for determining a sentence of death or life imprisonment, and sexual battery, respectively, to incorporate the amendment made to s. 921.141, F.S., in references thereto; reenacting s. 893.135(1)(b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l), F.S., relating to the punishments for capital drug trafficking felonies, to incorporate the amendment made to s. 921.142, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section 921.141, Florida Statutes, is amended to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(c) If a unanimous jury determines at least 10 jurors ~~determine~~ that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If a unanimous jury does not fewer than 10 jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life

Page 1 of 20

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11-00363-17

2017280__

imprisonment without the possibility of parole.

Section 2. Paragraph (c) of subsection (3) of section 921.142, Florida Statutes, is amended to read:

921.142 Sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence.—

(3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(c) If a unanimous jury determines at least 10 jurors ~~determine~~ that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If a unanimous jury does not fewer than 10 jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

Section 3. For the purpose of incorporating the amendment made by this act to section 921.141, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 775.082, Florida Statutes, is reenacted to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)(a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in a determination that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be

Page 2 of 20

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11-00363-17

2017280__

62 ineligible for parole.

63 Section 4. For the purpose of incorporating the amendment
64 made by this act to section 921.141, Florida Statutes, in a
65 reference thereto, paragraph (b) of subsection (1) of section
66 782.04, Florida Statutes, is reenacted to read:

67 782.04 Murder.—

68 (1)

69 (b) In all cases under this section, the procedure set
70 forth in s. 921.141 shall be followed in order to determine
71 sentence of death or life imprisonment. If the prosecutor
72 intends to seek the death penalty, the prosecutor must give
73 notice to the defendant and file the notice with the court
74 within 45 days after arraignment. The notice must contain a list
75 of the aggravating factors the state intends to prove and has
76 reason to believe it can prove beyond a reasonable doubt. The
77 court may allow the prosecutor to amend the notice upon a
78 showing of good cause.

79 Section 5. For the purpose of incorporating the amendment
80 made by this act to section 921.141, Florida Statutes, in a
81 reference thereto, paragraph (a) of subsection (2) of section
82 794.011, Florida Statutes, is reenacted to read:

83 794.011 Sexual battery.—

84 (2) (a) A person 18 years of age or older who commits sexual
85 battery upon, or in an attempt to commit sexual battery injures
86 the sexual organs of, a person less than 12 years of age commits
87 a capital felony, punishable as provided in ss. 775.082 and
88 921.141.

89 Section 6. For the purpose of incorporating the amendment
90 made by this act to section 921.142, Florida Statutes, in

11-00363-17

2017280__

91 references thereto, paragraphs (b) through (1) of subsection (1)
92 of section 893.135, Florida Statutes, are reenacted to read:

93 893.135 Trafficking; mandatory sentences; suspension or
94 reduction of sentences; conspiracy to engage in trafficking.—

95 (1) Except as authorized in this chapter or in chapter 499
96 and notwithstanding the provisions of s. 893.13:

97 (b)1. Any person who knowingly sells, purchases,
98 manufactures, delivers, or brings into this state, or who is
99 knowingly in actual or constructive possession of, 28 grams or
100 more of cocaine, as described in s. 893.03(2)(a)4., or of any
101 mixture containing cocaine, but less than 150 kilograms of
102 cocaine or any such mixture, commits a felony of the first
103 degree, which felony shall be known as "trafficking in cocaine,"
104 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
105 If the quantity involved:

106 a. Is 28 grams or more, but less than 200 grams, such
107 person shall be sentenced to a mandatory minimum term of
108 imprisonment of 3 years, and the defendant shall be ordered to
109 pay a fine of \$50,000.

110 b. Is 200 grams or more, but less than 400 grams, such
111 person shall be sentenced to a mandatory minimum term of
112 imprisonment of 7 years, and the defendant shall be ordered to
113 pay a fine of \$100,000.

114 c. Is 400 grams or more, but less than 150 kilograms, such
115 person shall be sentenced to a mandatory minimum term of
116 imprisonment of 15 calendar years and pay a fine of \$250,000.

117 2. Any person who knowingly sells, purchases, manufactures,
118 delivers, or brings into this state, or who is knowingly in
119 actual or constructive possession of, 150 kilograms or more of

11-00363-17 2017280__
 120 cocaine, as described in s. 893.03(2)(a)4., commits the first
 121 degree felony of trafficking in cocaine. A person who has been
 122 convicted of the first degree felony of trafficking in cocaine
 123 under this subparagraph shall be punished by life imprisonment
 124 and is ineligible for any form of discretionary early release
 125 except pardon or executive clemency or conditional medical
 126 release under s. 947.149. However, if the court determines that,
 127 in addition to committing any act specified in this paragraph:

128 a. The person intentionally killed an individual or
 129 counseled, commanded, induced, procured, or caused the
 130 intentional killing of an individual and such killing was the
 131 result; or

132 b. The person's conduct in committing that act led to a
 133 natural, though not inevitable, lethal result,

134 such person commits the capital felony of trafficking in
 135 cocaine, punishable as provided in ss. 775.082 and 921.142. Any
 136 person sentenced for a capital felony under this paragraph shall
 137 also be sentenced to pay the maximum fine provided under
 138 subparagraph 1.
 139

140 3. Any person who knowingly brings into this state 300
 141 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
 142 and who knows that the probable result of such importation would
 143 be the death of any person, commits capital importation of
 144 cocaine, a capital felony punishable as provided in ss. 775.082
 145 and 921.142. Any person sentenced for a capital felony under
 146 this paragraph shall also be sentenced to pay the maximum fine
 147 provided under subparagraph 1.

148 (c)1. A person who knowingly sells, purchases,

11-00363-17 2017280__
 149 manufactures, delivers, or brings into this state, or who is
 150 knowingly in actual or constructive possession of, 4 grams or
 151 more of any morphine, opium, hydromorphone, or any salt,
 152 derivative, isomer, or salt of an isomer thereof, including
 153 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
 154 (3)(c)4., or 4 grams or more of any mixture containing any such
 155 substance, but less than 30 kilograms of such substance or
 156 mixture, commits a felony of the first degree, which felony
 157 shall be known as "trafficking in illegal drugs," punishable as
 158 provided in s. 775.082, s. 775.083, or s. 775.084. If the
 159 quantity involved:

160 a. Is 4 grams or more, but less than 14 grams, such person
 161 shall be sentenced to a mandatory minimum term of imprisonment
 162 of 3 years and shall be ordered to pay a fine of \$50,000.

163 b. Is 14 grams or more, but less than 28 grams, such person
 164 shall be sentenced to a mandatory minimum term of imprisonment
 165 of 15 years and shall be ordered to pay a fine of \$100,000.

166 c. Is 28 grams or more, but less than 30 kilograms, such
 167 person shall be sentenced to a mandatory minimum term of
 168 imprisonment of 25 years and shall be ordered to pay a fine of
 169 \$500,000.

170 2. A person who knowingly sells, purchases, manufactures,
 171 delivers, or brings into this state, or who is knowingly in
 172 actual or constructive possession of, 14 grams or more of
 173 hydrocodone, or any salt, derivative, isomer, or salt of an
 174 isomer thereof, or 14 grams or more of any mixture containing
 175 any such substance, commits a felony of the first degree, which
 176 felony shall be known as "trafficking in hydrocodone,"
 177 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

11-00363-17

2017280__

178 If the quantity involved:

179 a. Is 14 grams or more, but less than 28 grams, such person
180 shall be sentenced to a mandatory minimum term of imprisonment
181 of 3 years and shall be ordered to pay a fine of \$50,000.

182 b. Is 28 grams or more, but less than 50 grams, such person
183 shall be sentenced to a mandatory minimum term of imprisonment
184 of 7 years and shall be ordered to pay a fine of \$100,000.

185 c. Is 50 grams or more, but less than 200 grams, such
186 person shall be sentenced to a mandatory minimum term of
187 imprisonment of 15 years and shall be ordered to pay a fine of
188 \$500,000.

189 d. Is 200 grams or more, but less than 30 kilograms, such
190 person shall be sentenced to a mandatory minimum term of
191 imprisonment of 25 years and shall be ordered to pay a fine of
192 \$750,000.

193 3. A person who knowingly sells, purchases, manufactures,
194 delivers, or brings into this state, or who is knowingly in
195 actual or constructive possession of, 7 grams or more of
196 oxycodone, or any salt, derivative, isomer, or salt of an isomer
197 thereof, or 7 grams or more of any mixture containing any such
198 substance, commits a felony of the first degree, which felony
199 shall be known as "trafficking in oxycodone," punishable as
200 provided in s. 775.082, s. 775.083, or s. 775.084. If the
201 quantity involved:

202 a. Is 7 grams or more, but less than 14 grams, such person
203 shall be sentenced to a mandatory minimum term of imprisonment
204 of 3 years and shall be ordered to pay a fine of \$50,000.

205 b. Is 14 grams or more, but less than 25 grams, such person
206 shall be sentenced to a mandatory minimum term of imprisonment

11-00363-17

2017280__

207 of 7 years and shall be ordered to pay a fine of \$100,000.

208 c. Is 25 grams or more, but less than 100 grams, such
209 person shall be sentenced to a mandatory minimum term of
210 imprisonment of 15 years and shall be ordered to pay a fine of
211 \$500,000.

212 d. Is 100 grams or more, but less than 30 kilograms, such
213 person shall be sentenced to a mandatory minimum term of
214 imprisonment of 25 years and shall be ordered to pay a fine of
215 \$750,000.

216 4. A person who knowingly sells, purchases, manufactures,
217 delivers, or brings into this state, or who is knowingly in
218 actual or constructive possession of, 30 kilograms or more of
219 any morphine, opium, oxycodone, hydrocodone, hydromorphone, or
220 any salt, derivative, isomer, or salt of an isomer thereof,
221 including heroin, as described in s. 893.03(1)(b), (2)(a),
222 (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture
223 containing any such substance, commits the first degree felony
224 of trafficking in illegal drugs. A person who has been convicted
225 of the first degree felony of trafficking in illegal drugs under
226 this subparagraph shall be punished by life imprisonment and is
227 ineligible for any form of discretionary early release except
228 pardon or executive clemency or conditional medical release
229 under s. 947.149. However, if the court determines that, in
230 addition to committing any act specified in this paragraph:

231 a. The person intentionally killed an individual or
232 counseled, commanded, induced, procured, or caused the
233 intentional killing of an individual and such killing was the
234 result; or

235 b. The person's conduct in committing that act led to a

11-00363-17

2017280__

236 natural, though not inevitable, lethal result,
 237
 238 such person commits the capital felony of trafficking in illegal
 239 drugs, punishable as provided in ss. 775.082 and 921.142. A
 240 person sentenced for a capital felony under this paragraph shall
 241 also be sentenced to pay the maximum fine provided under
 242 subparagraph 1.

243 5. A person who knowingly brings into this state 60
 244 kilograms or more of any morphine, opium, oxycodone,
 245 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
 246 salt of an isomer thereof, including heroin, as described in s.
 247 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or
 248 more of any mixture containing any such substance, and who knows
 249 that the probable result of such importation would be the death
 250 of a person, commits capital importation of illegal drugs, a
 251 capital felony punishable as provided in ss. 775.082 and
 252 921.142. A person sentenced for a capital felony under this
 253 paragraph shall also be sentenced to pay the maximum fine
 254 provided under subparagraph 1.

255 (d)1. Any person who knowingly sells, purchases,
 256 manufactures, delivers, or brings into this state, or who is
 257 knowingly in actual or constructive possession of, 28 grams or
 258 more of phencyclidine or of any mixture containing
 259 phencyclidine, as described in s. 893.03(2)(b), commits a felony
 260 of the first degree, which felony shall be known as "trafficking
 261 in phencyclidine," punishable as provided in s. 775.082, s.
 262 775.083, or s. 775.084. If the quantity involved:

263 a. Is 28 grams or more, but less than 200 grams, such
 264 person shall be sentenced to a mandatory minimum term of

11-00363-17

2017280__

265 imprisonment of 3 years, and the defendant shall be ordered to
 266 pay a fine of \$50,000.

267 b. Is 200 grams or more, but less than 400 grams, such
 268 person shall be sentenced to a mandatory minimum term of
 269 imprisonment of 7 years, and the defendant shall be ordered to
 270 pay a fine of \$100,000.

271 c. Is 400 grams or more, such person shall be sentenced to
 272 a mandatory minimum term of imprisonment of 15 calendar years
 273 and pay a fine of \$250,000.

274 2. Any person who knowingly brings into this state 800
 275 grams or more of phencyclidine or of any mixture containing
 276 phencyclidine, as described in s. 893.03(2)(b), and who knows
 277 that the probable result of such importation would be the death
 278 of any person commits capital importation of phencyclidine, a
 279 capital felony punishable as provided in ss. 775.082 and
 280 921.142. Any person sentenced for a capital felony under this
 281 paragraph shall also be sentenced to pay the maximum fine
 282 provided under subparagraph 1.

283 (e)1. Any person who knowingly sells, purchases,
 284 manufactures, delivers, or brings into this state, or who is
 285 knowingly in actual or constructive possession of, 200 grams or
 286 more of methaqualone or of any mixture containing methaqualone,
 287 as described in s. 893.03(1)(d), commits a felony of the first
 288 degree, which felony shall be known as "trafficking in
 289 methaqualone," punishable as provided in s. 775.082, s. 775.083,
 290 or s. 775.084. If the quantity involved:

291 a. Is 200 grams or more, but less than 5 kilograms, such
 292 person shall be sentenced to a mandatory minimum term of
 293 imprisonment of 3 years, and the defendant shall be ordered to

11-00363-17

2017280__

294 pay a fine of \$50,000.

295 b. Is 5 kilograms or more, but less than 25 kilograms, such
296 person shall be sentenced to a mandatory minimum term of
297 imprisonment of 7 years, and the defendant shall be ordered to
298 pay a fine of \$100,000.

299 c. Is 25 kilograms or more, such person shall be sentenced
300 to a mandatory minimum term of imprisonment of 15 calendar years
301 and pay a fine of \$250,000.

302 2. Any person who knowingly brings into this state 50
303 kilograms or more of methaqualone or of any mixture containing
304 methaqualone, as described in s. 893.03(1)(d), and who knows
305 that the probable result of such importation would be the death
306 of any person commits capital importation of methaqualone, a
307 capital felony punishable as provided in ss. 775.082 and
308 921.142. Any person sentenced for a capital felony under this
309 paragraph shall also be sentenced to pay the maximum fine
310 provided under subparagraph 1.

311 (f)1. Any person who knowingly sells, purchases,
312 manufactures, delivers, or brings into this state, or who is
313 knowingly in actual or constructive possession of, 14 grams or
314 more of amphetamine, as described in s. 893.03(2)(c)2., or
315 methamphetamine, as described in s. 893.03(2)(c)4., or of any
316 mixture containing amphetamine or methamphetamine, or
317 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine
318 in conjunction with other chemicals and equipment utilized in
319 the manufacture of amphetamine or methamphetamine, commits a
320 felony of the first degree, which felony shall be known as
321 "trafficking in amphetamine," punishable as provided in s.
322 775.082, s. 775.083, or s. 775.084. If the quantity involved:

Page 11 of 20

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11-00363-17

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323 a. Is 14 grams or more, but less than 28 grams, such person
324 shall be sentenced to a mandatory minimum term of imprisonment
325 of 3 years, and the defendant shall be ordered to pay a fine of
326 \$50,000.

327 b. Is 28 grams or more, but less than 200 grams, such
328 person shall be sentenced to a mandatory minimum term of
329 imprisonment of 7 years, and the defendant shall be ordered to
330 pay a fine of \$100,000.

331 c. Is 200 grams or more, such person shall be sentenced to
332 a mandatory minimum term of imprisonment of 15 calendar years
333 and pay a fine of \$250,000.

334 2. Any person who knowingly manufactures or brings into
335 this state 400 grams or more of amphetamine, as described in s.
336 893.03(2)(c)2., or methamphetamine, as described in s.
337 893.03(2)(c)4., or of any mixture containing amphetamine or
338 methamphetamine, or phenylacetone, phenylacetic acid,
339 pseudoephedrine, or ephedrine in conjunction with other
340 chemicals and equipment used in the manufacture of amphetamine
341 or methamphetamine, and who knows that the probable result of
342 such manufacture or importation would be the death of any person
343 commits capital manufacture or importation of amphetamine, a
344 capital felony punishable as provided in ss. 775.082 and
345 921.142. Any person sentenced for a capital felony under this
346 paragraph shall also be sentenced to pay the maximum fine
347 provided under subparagraph 1.

348 (g)1. Any person who knowingly sells, purchases,
349 manufactures, delivers, or brings into this state, or who is
350 knowingly in actual or constructive possession of, 4 grams or
351 more of flunitrazepam or any mixture containing flunitrazepam as

Page 12 of 20

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11-00363-17

2017280__

352 described in s. 893.03(1)(a) commits a felony of the first
 353 degree, which felony shall be known as "trafficking in
 354 flunitrazepam," punishable as provided in s. 775.082, s.
 355 775.083, or s. 775.084. If the quantity involved:

356 a. Is 4 grams or more but less than 14 grams, such person
 357 shall be sentenced to a mandatory minimum term of imprisonment
 358 of 3 years, and the defendant shall be ordered to pay a fine of
 359 \$50,000.

360 b. Is 14 grams or more but less than 28 grams, such person
 361 shall be sentenced to a mandatory minimum term of imprisonment
 362 of 7 years, and the defendant shall be ordered to pay a fine of
 363 \$100,000.

364 c. Is 28 grams or more but less than 30 kilograms, such
 365 person shall be sentenced to a mandatory minimum term of
 366 imprisonment of 25 calendar years and pay a fine of \$500,000.

367 2. Any person who knowingly sells, purchases, manufactures,
 368 delivers, or brings into this state or who is knowingly in
 369 actual or constructive possession of 30 kilograms or more of
 370 flunitrazepam or any mixture containing flunitrazepam as
 371 described in s. 893.03(1)(a) commits the first degree felony of
 372 trafficking in flunitrazepam. A person who has been convicted of
 373 the first degree felony of trafficking in flunitrazepam under
 374 this subparagraph shall be punished by life imprisonment and is
 375 ineligible for any form of discretionary early release except
 376 pardon or executive clemency or conditional medical release
 377 under s. 947.149. However, if the court determines that, in
 378 addition to committing any act specified in this paragraph:

379 a. The person intentionally killed an individual or
 380 counseled, commanded, induced, procured, or caused the

Page 13 of 20

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11-00363-17

2017280__

381 intentional killing of an individual and such killing was the
 382 result; or

383 b. The person's conduct in committing that act led to a
 384 natural, though not inevitable, lethal result,

385

386 such person commits the capital felony of trafficking in
 387 flunitrazepam, punishable as provided in ss. 775.082 and
 388 921.142. Any person sentenced for a capital felony under this
 389 paragraph shall also be sentenced to pay the maximum fine
 390 provided under subparagraph 1.

391 (h)1. Any person who knowingly sells, purchases,
 392 manufactures, delivers, or brings into this state, or who is
 393 knowingly in actual or constructive possession of, 1 kilogram or
 394 more of gamma-hydroxybutyric acid (GHB), as described in s.
 395 893.03(1)(d), or any mixture containing gamma-hydroxybutyric
 396 acid (GHB), commits a felony of the first degree, which felony
 397 shall be known as "trafficking in gamma-hydroxybutyric acid
 398 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.
 399 775.084. If the quantity involved:

400 a. Is 1 kilogram or more but less than 5 kilograms, such
 401 person shall be sentenced to a mandatory minimum term of
 402 imprisonment of 3 years, and the defendant shall be ordered to
 403 pay a fine of \$50,000.

404 b. Is 5 kilograms or more but less than 10 kilograms, such
 405 person shall be sentenced to a mandatory minimum term of
 406 imprisonment of 7 years, and the defendant shall be ordered to
 407 pay a fine of \$100,000.

408 c. Is 10 kilograms or more, such person shall be sentenced
 409 to a mandatory minimum term of imprisonment of 15 calendar years

Page 14 of 20

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11-00363-17

2017280__

410 and pay a fine of \$250,000.

411 2. Any person who knowingly manufactures or brings into
412 this state 150 kilograms or more of gamma-hydroxybutyric acid
413 (GHB), as described in s. 893.03(1)(d), or any mixture
414 containing gamma-hydroxybutyric acid (GHB), and who knows that
415 the probable result of such manufacture or importation would be
416 the death of any person commits capital manufacture or
417 importation of gamma-hydroxybutyric acid (GHB), a capital felony
418 punishable as provided in ss. 775.082 and 921.142. Any person
419 sentenced for a capital felony under this paragraph shall also
420 be sentenced to pay the maximum fine provided under subparagraph
421 1.

422 (i)1. Any person who knowingly sells, purchases,
423 manufactures, delivers, or brings into this state, or who is
424 knowingly in actual or constructive possession of, 1 kilogram or
425 more of gamma-butyrolactone (GBL), as described in s.
426 893.03(1)(d), or any mixture containing gamma-butyrolactone
427 (GBL), commits a felony of the first degree, which felony shall
428 be known as "trafficking in gamma-butyrolactone (GBL)," ~~and~~
429 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
430 If the quantity involved:

431 a. Is 1 kilogram or more but less than 5 kilograms, such
432 person shall be sentenced to a mandatory minimum term of
433 imprisonment of 3 years, and the defendant shall be ordered to
434 pay a fine of \$50,000.

435 b. Is 5 kilograms or more but less than 10 kilograms, such
436 person shall be sentenced to a mandatory minimum term of
437 imprisonment of 7 years, and the defendant shall be ordered to
438 pay a fine of \$100,000.

11-00363-17

2017280__

439 c. Is 10 kilograms or more, such person shall be sentenced
440 to a mandatory minimum term of imprisonment of 15 calendar years
441 and pay a fine of \$250,000.

442 2. Any person who knowingly manufactures or brings into the
443 state 150 kilograms or more of gamma-butyrolactone (GBL), as
444 described in s. 893.03(1)(d), or any mixture containing gamma-
445 butyrolactone (GBL), and who knows that the probable result of
446 such manufacture or importation would be the death of any person
447 commits capital manufacture or importation of gamma-
448 butyrolactone (GBL), a capital felony punishable as provided in
449 ss. 775.082 and 921.142. Any person sentenced for a capital
450 felony under this paragraph shall also be sentenced to pay the
451 maximum fine provided under subparagraph 1.

452 (j)1. Any person who knowingly sells, purchases,
453 manufactures, delivers, or brings into this state, or who is
454 knowingly in actual or constructive possession of, 1 kilogram or
455 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of
456 any mixture containing 1,4-Butanediol, commits a felony of the
457 first degree, which felony shall be known as "trafficking in
458 1,4-Butanediol," punishable as provided in s. 775.082, s.
459 775.083, or s. 775.084. If the quantity involved:

460 a. Is 1 kilogram or more, but less than 5 kilograms, such
461 person shall be sentenced to a mandatory minimum term of
462 imprisonment of 3 years, and the defendant shall be ordered to
463 pay a fine of \$50,000.

464 b. Is 5 kilograms or more, but less than 10 kilograms, such
465 person shall be sentenced to a mandatory minimum term of
466 imprisonment of 7 years, and the defendant shall be ordered to
467 pay a fine of \$100,000.

11-00363-17

2017280__

468 c. Is 10 kilograms or more, such person shall be sentenced
469 to a mandatory minimum term of imprisonment of 15 calendar years
470 and pay a fine of \$500,000.

471 2. Any person who knowingly manufactures or brings into
472 this state 150 kilograms or more of 1,4-Butanediol as described
473 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,
474 and who knows that the probable result of such manufacture or
475 importation would be the death of any person commits capital
476 manufacture or importation of 1,4-Butanediol, a capital felony
477 punishable as provided in ss. 775.082 and 921.142. Any person
478 sentenced for a capital felony under this paragraph shall also
479 be sentenced to pay the maximum fine provided under subparagraph
480 1.

481 (k)1. A person who knowingly sells, purchases,
482 manufactures, delivers, or brings into this state, or who is
483 knowingly in actual or constructive possession of, 10 grams or
484 more of any of the following substances described in s.
485 893.03(1)(c):

- 486 a. (MDMA) 3,4-Methylenedioxyamphetamine;
- 487 b. DOB (4-Bromo-2,5-dimethoxyamphetamine);
- 488 c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);
- 489 d. 2,5-Dimethoxyamphetamine;
- 490 e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);
- 491 f. N-ethylamphetamine;
- 492 g. 3,4-Methylenedioxy-N-hydroxyamphetamine;
- 493 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 494 i. PMA (4-methoxyamphetamine);
- 495 j. PMMA (4-methoxymethamphetamine);
- 496 k. DOM (4-Methyl-2,5-dimethoxyamphetamine);

Page 17 of 20

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11-00363-17

2017280__

- 497 1. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);
- 498 m. MDA (3,4-Methylenedioxyamphetamine);
- 499 n. N,N-dimethylamphetamine;
- 500 o. 3,4,5-Trimethoxyamphetamine;
- 501 p. Methyloone (3,4-Methylenedioxy-methcathinone);
- 502 q. MDPV (3,4-Methylenedioxy-pyrovalerone); or
- 503 r. Methylmethcathinone,
- 504

505 individually or analogs thereto or isomers thereto or in any
506 combination of or any mixture containing any substance listed in
507 sub-subparagraphs a.-r., commits a felony of the first degree,
508 which felony shall be known as "trafficking in Phenethylamines,"
509 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

510 2. If the quantity involved:

511 a. Is 10 grams or more, but less than 200 grams, such
512 person shall be sentenced to a mandatory minimum term of
513 imprisonment of 3 years and shall be ordered to pay a fine of
514 \$50,000.

515 b. Is 200 grams or more, but less than 400 grams, such
516 person shall be sentenced to a mandatory minimum term of
517 imprisonment of 7 years and shall be ordered to pay a fine of
518 \$100,000.

519 c. Is 400 grams or more, such person shall be sentenced to
520 a mandatory minimum term of imprisonment of 15 years and shall
521 be ordered to pay a fine of \$250,000.

522 3. A person who knowingly manufactures or brings into this
523 state 30 kilograms or more of any of the following substances
524 described in s. 893.03(1)(c):

- 525 a. MDMA (3,4-Methylenedioxy-methamphetamine);

Page 18 of 20

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11-00363-17

2017280__

526 b. DOB (4-Bromo-2,5-dimethoxyamphetamine);
 527 c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);
 528 d. 2,5-Dimethoxyamphetamine;
 529 e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);
 530 f. N-ethylamphetamine;
 531 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
 532 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
 533 i. PMA (4-methoxyamphetamine);
 534 j. PMMA (4-methoxymethamphetamine);
 535 k. DOM (4-Methyl-2,5-dimethoxyamphetamine);
 536 l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);
 537 m. MDA (3,4-Methylenedioxyamphetamine);
 538 n. N,N-dimethylamphetamine;
 539 o. 3,4,5-Trimethoxyamphetamine;
 540 p. Methyldone (3,4-Methylenedioxyamphetaminone);
 541 q. MDPV (3,4-Methylenedioxypropylone); or
 542 r. Methyldone,
 543
 544 individually or analogs thereto or isomers thereto or in any
 545 combination of or any mixture containing any substance listed in
 546 sub-subparagraphs a.-r., and who knows that the probable result
 547 of such manufacture or importation would be the death of any
 548 person commits capital manufacture or importation of
 549 Phenethylamines, a capital felony punishable as provided in ss.
 550 775.082 and 921.142. A person sentenced for a capital felony
 551 under this paragraph shall also be sentenced to pay the maximum
 552 fine provided under subparagraph 1.
 553 (1)1. Any person who knowingly sells, purchases,
 554 manufactures, delivers, or brings into this state, or who is

11-00363-17

2017280__

555 knowingly in actual or constructive possession of, 1 gram or
 556 more of lysergic acid diethylamide (LSD) as described in s.
 557 893.03(1)(c), or of any mixture containing lysergic acid
 558 diethylamide (LSD), commits a felony of the first degree, which
 559 felony shall be known as "trafficking in lysergic acid
 560 diethylamide (LSD)," punishable as provided in s. 775.082, s.
 561 775.083, or s. 775.084. If the quantity involved:
 562 a. Is 1 gram or more, but less than 5 grams, such person
 563 shall be sentenced to a mandatory minimum term of imprisonment
 564 of 3 years, and the defendant shall be ordered to pay a fine of
 565 \$50,000.
 566 b. Is 5 grams or more, but less than 7 grams, such person
 567 shall be sentenced to a mandatory minimum term of imprisonment
 568 of 7 years, and the defendant shall be ordered to pay a fine of
 569 \$100,000.
 570 c. Is 7 grams or more, such person shall be sentenced to a
 571 mandatory minimum term of imprisonment of 15 calendar years and
 572 pay a fine of \$500,000.
 573 2. Any person who knowingly manufactures or brings into
 574 this state 7 grams or more of lysergic acid diethylamide (LSD)
 575 as described in s. 893.03(1)(c), or any mixture containing
 576 lysergic acid diethylamide (LSD), and who knows that the
 577 probable result of such manufacture or importation would be the
 578 death of any person commits capital manufacture or importation
 579 of lysergic acid diethylamide (LSD), a capital felony punishable
 580 as provided in ss. 775.082 and 921.142. Any person sentenced for
 581 a capital felony under this paragraph shall also be sentenced to
 582 pay the maximum fine provided under subparagraph 1.
 583 Section 7. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 6, 2017

Meeting Date

280

Bill Number (if applicable)

534722

Amendment Barcode (if applicable)

Topic Sentencing for Capital Felonies

Name Hon. Rex Dimmig

Job Title Public Defender, 10th Circuit

Address 255 North Broadway

Street

Bartow

City

FL

State

32830

Zip

Phone 863-534-4200

Email dimmi_r@pd10.state.fl.us

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-6-17

Meeting Date

280

Bill Number (if applicable)

534722

Amendment Barcode (if applicable)

Topic Retroactivity - Death Penalty

Name HENRY BROWN

Job Title Capital Mitigation Consultant

Address 2450 Nugget Lane T

Phone 850-933-2465

Street

PALM HARBOR FL

City

State

Zip

Email hitemop.b@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
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(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 6, 2017
Meeting Date

280
Bill Number (if applicable)

Topic Sentencing for Capital Felonies

Amendment Barcode (if applicable)

Name Hon. Rex Dimmig

Job Title Public Defender, 10th Circuit

Address 255 North Broadway

Phone 863-534-4200

Street

Bartow

FL

32830

Email dimmi_r@pd10.state.fl.us

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/17

Meeting Date

SB 280

Bill Number (if applicable)

Topic Death Penalty

Amendment Barcode (if applicable)

Name Buddy JACOBS

Job Title General Counsel Fla. Prosecuting Association

Address 961687 Gateway Blvd.

Phone 904-261-3693

Street

Fernandina Bch Fla. 32034

City

State

Zip

Email bjacobs@concast.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing State Attorneys of Fla

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.6.17

Meeting Date

280

Bill Number (if applicable)

Topic Sentencing For Capital Felonies

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Assoc of Criminal defense lawyers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 2/6/2017 4:03:34 PM

Ends: 2/6/2017 5:18:14 PM Length: 01:14:41

4:03:33 PM Meeting called to order
4:03:45 PM Roll call
4:04:27 PM Tab 1 - SB 154 (Senator Thurston) Autism Awareness Training for Law Enforcement
4:06:51 PM Amendment Barcode 330190
4:07:51 PM Speaker Cards (Waive in Support)
4:08:21 PM Debate
4:08:45 PM Close on SB 154
4:09:01 PM Roll call on SB 154
4:09:25 PM Tab 2 - SB 192 (Senator Powell) Juvenile Justice
4:10:08 PM Amendment Barcode 206646
4:15:03 PM Questions on the amendment
4:15:17 PM Senator Baxley questions on the amendment
4:20:04 PM Senator Bean questions on the amendment
4:22:03 PM Rex Dimmig - Florida Public Defender's Assoc.
4:27:18 PM Scott McCoy, No Place for a Child Coalition
4:32:36 PM Barney Bishop - Florida Smart Justice Alliance
4:41:39 PM Buddy Jacobs - State Attorney's of Florida (Florida Prosecuting Atty's Assoc.)
4:50:26 PM Speakers Waive in Support
4:51:52 PM Debate on amendment
4:54:51 PM Vote on Amendment
4:55:22 PM Debate on the bill as amended
5:00:13 PM Senator Powell to close on the bill
5:03:10 PM Roll call on SB 192
5:03:37 PM Turn chair over to Senator Baxley
5:03:51 PM Tab 3 - SB 280 (Senator Bracy) Sentencing in Capital Felonies
5:05:03 PM Amendment Barcode 534722
5:05:23 PM Rex Demig, Florida Public Defender's Association
5:12:21 PM Buddy Jacobs, Florida Prosecuting Attorney's Association
5:13:50 PM Debate
5:15:31 PM Senator Bracy to close on SB 280
5:17:29 PM Roll Call on SB 280
5:17:52 PM Chair returned to Chairman Bracy
5:17:56 PM Senator Rouson moves we adjourn