

By Representative Warner

1                                   A bill to be entitled  
2           An act relating to imposition of adult  
3           sanctions upon children; amending s. 39.059,  
4           F.S., relating to community control or  
5           commitment of children prosecuted as adults;  
6           removing a requirement that a decision by the  
7           court to impose adult sanctions upon certain  
8           offenders must be in writing; providing for a  
9           presumption that the sentence imposing adult  
10          sanctions is appropriate; reenacting s.  
11          39.052(3)(a), F.S., relating to transfer of a  
12          child for prosecution as an adult, to  
13          incorporate said amendment in references;  
14          providing an effective date.

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

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18           Section 1. Paragraph (d) of subsection (7) of section  
19          39.059, Florida Statutes, is amended to read:

20           39.059 Community control or commitment of children  
21          prosecuted as adults.--

22           (7)

23           (d) Any sentence imposing ~~decision to impose~~ adult  
24          sanctions ~~must be in writing, but~~ is presumed appropriate, and  
25          the court is not required to set forth specific findings or  
26          enumerate the criteria in this subsection as any basis for its  
27          decision to impose adult sanctions.

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29          It is the intent of the Legislature that the criteria and  
30          guidelines in this subsection are mandatory and that a

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1 determination of disposition under this subsection is subject  
2 to the right of the child to appellate review under s. 39.069.

3 Section 2. For the purpose of incorporating the  
4 amendment to section 39.059 in references thereto, paragraph  
5 (a) of subsection (3) of section 39.052, Florida Statutes,  
6 1996 Supplement, is reenacted to read:

7 39.052 Hearings.--

8 (3) TRANSFER OF A CHILD FOR PROSECUTION AS AN ADULT.--

9 (a)1. The court shall transfer and certify a child's  
10 criminal case for trial as an adult if the child is alleged to  
11 have committed a violation of law and, prior to the  
12 commencement of an adjudicatory hearing, the child, joined by  
13 a parent or, in the absence of a parent, by the guardian or  
14 guardian ad litem, demands in writing to be tried as an adult.  
15 Once a child has been transferred for criminal prosecution  
16 pursuant to a voluntary waiver hearing and has been found to  
17 have committed the presenting offense or a lesser included  
18 offense, the child shall be handled thereafter in every  
19 respect as an adult for any subsequent violation of state law,  
20 unless the court imposes juvenile sanctions under s.  
21 39.059(4)(b) or (c).

22 2.a. The state attorney may file a motion requesting  
23 the court to transfer the child for criminal prosecution if  
24 the child was 14 years of age or older at the time the alleged  
25 delinquent act or violation of law was committed. If the child  
26 has been previously adjudicated delinquent for murder, sexual  
27 battery, armed or strong-armed robbery, carjacking,  
28 home-invasion robbery, aggravated battery, or aggravated  
29 assault, and is currently charged with a second or subsequent  
30 violent crime against a person, the state attorney shall file  
31 a motion requesting the court to transfer and certify the

1 juvenile for prosecution as an adult, or proceed pursuant to  
2 subparagraph 5.

3           b. If the child was 14 years of age or older at the  
4 time of commission of a fourth or subsequent alleged felony  
5 offense and the child was previously adjudicated delinquent or  
6 had adjudication withheld for or was found to have committed,  
7 or to have attempted or conspired to commit, three offenses  
8 that are felony offenses if committed by an adult, and one or  
9 more of such felony offenses involved the use or possession of  
10 a firearm or violence against a person, the state attorney  
11 shall request the court to transfer and certify the child for  
12 prosecution as an adult or shall provide written reasons to  
13 the court for not making such request, or proceed pursuant to  
14 subparagraph 5. Upon the state attorney's request, the court  
15 shall either enter an order transferring the case and  
16 certifying the case for trial as if the child were an adult or  
17 provide written reasons for not issuing such an order.

18           3. If the court finds, after a waiver hearing under  
19 subsection (2), that a juvenile who was 14 years of age or  
20 older at the time the alleged violation of state law was  
21 committed should be charged and tried as an adult, the court  
22 shall enter an order transferring the case and certifying the  
23 case for trial as if the child were an adult. The child shall  
24 thereafter be subject to prosecution, trial, and sentencing as  
25 if the child were an adult but subject to the provisions of s.  
26 39.059(7). Once a child has been transferred for criminal  
27 prosecution pursuant to an involuntary waiver hearing and has  
28 been found to have committed the presenting offense or a  
29 lesser included offense, the child shall thereafter be handled  
30 in every respect as an adult for any subsequent violation of  
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1 state law, unless the court imposes juvenile sanctions under  
2 s. 39.059(4)(b) or (c).

3 4.a. A child of any age who is charged with a  
4 violation of state law punishable by death or by life  
5 imprisonment is subject to the jurisdiction of the court as  
6 set forth in s. 39.049(7) unless and until an indictment on  
7 the charge is returned by the grand jury. When such indictment  
8 is returned, the petition for delinquency, if any, must be  
9 dismissed and the child must be tried and handled in every  
10 respect as an adult:

11 (I) On the offense punishable by death or by life  
12 imprisonment; and

13 (II) On all other felonies or misdemeanors charged in  
14 the indictment which are based on the same act or transaction  
15 as the offense punishable by death or by life imprisonment or  
16 on one or more acts or transactions connected with the offense  
17 punishable by death or by life imprisonment.

18 b. An adjudicatory hearing may not be held until 21  
19 days after the child is taken into custody and charged with  
20 having committed an offense punishable by death or by life  
21 imprisonment, unless the state attorney advises the court in  
22 writing that he or she does not intend to present the case to  
23 the grand jury, or has presented the case to the grand jury  
24 and the grand jury has not returned an indictment. If the  
25 court receives such a notice from the state attorney, or if  
26 the grand jury fails to act within the 21-day period, the  
27 court may proceed as otherwise authorized under this part.

28 c. If the child is found to have committed the offense  
29 punishable by death or by life imprisonment, the child shall  
30 be sentenced as an adult. If the juvenile is not found to have  
31 committed the indictable offense but is found to have

1 committed a lesser included offense or any other offense for  
2 which he or she was indicted as a part of the criminal  
3 episode, the court may sentence as follows:

- 4 (I) Pursuant to s. 39.059;  
5 (II) Pursuant to chapter 958, notwithstanding any  
6 other provisions of that chapter to the contrary; or  
7 (III) As an adult, pursuant to s. 39.059(7)(c).  
8 d. Once a child has been indicted pursuant to this  
9 subsection and has been found to have committed any offense  
10 for which he or she was indicted as a part of the criminal  
11 episode, the child shall be handled thereafter in every  
12 respect as if an adult for any subsequent violation of state  
13 law, unless the court imposes juvenile sanctions under s.  
14 39.059.

15 5.a. Effective January 1, 1995, with respect to any  
16 child who was 14 or 15 years of age at the time the alleged  
17 offense was committed, the state attorney may file an  
18 information when in the state attorney's judgment and  
19 discretion the public interest requires that adult sanctions  
20 be considered or imposed and when the offense charged is:

- 21 (I) Arson;  
22 (II) Sexual battery;  
23 (III) Robbery;  
24 (IV) Kidnapping;  
25 (V) Aggravated child abuse;  
26 (VI) Aggravated assault;  
27 (VII) Aggravated stalking;  
28 (VIII) Murder;  
29 (IX) Manslaughter;  
30 (X) Unlawful throwing, placing, or discharging of a  
31 destructive device or bomb;

1 (XI) Armed burglary in violation of s. 810.02(2)(b) or  
2 specified burglary of a dwelling or structure in violation of  
3 s. 810.02(2)(c);

4 (XII) Aggravated battery;

5 (XIII) Lewd or lascivious assault or act in the  
6 presence of a child;

7 (XIV) Carrying, displaying, using, threatening, or  
8 attempting to use a weapon or firearm during the commission of  
9 a felony; or

10 (XV) Grand theft in violation of s. 812.014(2)(a).

11 b. With respect to any child who was 16 or 17 years of  
12 age at the time the alleged offense was committed, the state  
13 attorney:

14 (I) May file an information when in the state  
15 attorney's judgment and discretion the public interest  
16 requires that adult sanctions be considered or imposed.  
17 However, the state attorney may not file an information on a  
18 child charged with a misdemeanor, unless the child has had at  
19 least two previous adjudications or adjudications withheld for  
20 delinquent acts, one of which involved an offense classified  
21 as a felony under state law.

22 (II) Shall file an information if the child has been  
23 previously adjudicated delinquent for murder, sexual battery,  
24 armed or strong-armed robbery, carjacking, home-invasion  
25 robbery, aggravated battery, or aggravated assault, and is  
26 currently charged with a second or subsequent violent crime  
27 against a person.

28 c. Effective January 1, 1995, notwithstanding  
29 subparagraphs 1. and 2., regardless of the child's age at the  
30 time the alleged offense was committed, the state attorney  
31 must file an information with respect to any child who

1 previously has been adjudicated for offenses which, if  
2 committed by an adult, would be felonies and such  
3 adjudications occurred at three or more separate delinquency  
4 adjudicatory hearings, and three of which resulted in  
5 residential commitments as defined in s. 39.01(59).

6 d. Once a child has been transferred for criminal  
7 prosecution pursuant to information and has been found to have  
8 committed the presenting offense or a lesser included offense,  
9 the child shall be handled thereafter in every respect as if  
10 an adult for any subsequent violation of state law, unless the  
11 court imposes juvenile sanctions under s. 39.059(6).

12 e. Each state attorney shall develop and annually  
13 update written policies and guidelines to govern  
14 determinations for filing an information on a juvenile, to be  
15 submitted to the Executive Office of the Governor, the  
16 President of the Senate, the Speaker of the House of  
17 Representatives, and the Juvenile Justice Advisory Board not  
18 later than January 1 of each year.

19 f. The state attorney must file an information if a  
20 child, regardless of the child's age at the time the alleged  
21 offense was committed, is alleged to have committed an act  
22 that would be a violation of law if the child were an adult,  
23 that involves stealing a motor vehicle, including, but not  
24 limited to, a violation of s. 812.133, relating to carjacking,  
25 or s. 812.014(2)(c)6., relating to grand theft of a motor  
26 vehicle, and while the child was in possession of the stolen  
27 motor vehicle the child caused serious bodily injury to or the  
28 death of a person who was not involved in the underlying  
29 offense. For purposes of this section, the driver and all  
30 willing passengers in the stolen motor vehicle at the time  
31 such serious bodily injury or death is inflicted shall also be

1 subject to mandatory transfer to adult court. "Stolen motor  
2 vehicle," for the purposes of this section, means a motor  
3 vehicle that has been the subject of any criminal wrongful  
4 taking. For purposes of this section, "willing passengers"  
5 means all willing passengers who have participated in the  
6 underlying offense.

7 Section 3. This act shall take effect October 1, 1997,  
8 and shall apply to offenses committed on or after that date.

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HOUSE SUMMARY

Revises specified provisions relating to community control or commitment of children prosecuted as adults to remove a requirement that the decision by the court to impose adult sanctions upon certain offenders must be in writing. Provides for a presumption that the sentence imposing such adult sanctions is appropriate.