

By Representative Kyle

1                                   A bill to be entitled  
2           An act relating to juveniles; amending s.  
3           985.03, F.S.; revising a definition; amending  
4           s. 985.227, F.S.; deleting certain direct file  
5           provisions relating to 16-year-old or  
6           17-year-old children; amending s. 985.233,  
7           F.S.; revising disposition and sentencing  
8           provisions to apply to adults under 18 years of  
9           age; repealing s. 985.417, F.S., relating to  
10          transfers of children from the Department of  
11          Corrections to the Department of Juvenile  
12          Justice; providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16           Section 1. Subsection (7) of section 985.03, Florida  
17 Statutes, is amended to read:

18           985.03 Definitions.--When used in this chapter, the  
19 term:

20           (3) "Adult" means any natural person other than a  
21 child.

22           (7) "Child" or "juvenile" or "youth" means any  
23 unmarried person under the age of 16 ~~18~~ who has not been  
24 emancipated by order of the court and who has been found or  
25 alleged to be dependent, in need of services, or from a family  
26 in need of services; or any married or unmarried person who is  
27 charged with a violation of law occurring prior to the time  
28 that person reached the age of 16 ~~18~~ years.

29           Section 2. Subsections (1) and (2) of section 985.227,  
30 Florida Statutes, are amended to read:

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1           985.227 Prosecution of juveniles as adults by the  
2 direct filing of an information in the criminal division of  
3 the circuit court; discretionary criteria; mandatory  
4 criteria.--  
5           (1) DISCRETIONARY DIRECT FILE; CRITERIA.--  
6           ~~(a)~~ With respect to any child who was 14 or 15 years  
7 of age at the time the alleged offense was committed, the  
8 state attorney may file an information when in the state  
9 attorney's judgment and discretion the public interest  
10 requires that adult sanctions be considered or imposed and  
11 when the offense charged is for the commission of, attempt to  
12 commit, or conspiracy to commit:  
13           (a)~~1~~. Arson;  
14           (b)~~2~~. Sexual battery;  
15           (c)~~3~~. Robbery;  
16           (d)~~4~~. Kidnapping;  
17           (e)~~5~~. Aggravated child abuse;  
18           (f)~~6~~. Aggravated assault;  
19           (g)~~7~~. Aggravated stalking;  
20           (h)~~8~~. Murder;  
21           (i)~~9~~. Manslaughter;  
22           (j)~~10~~. Unlawful throwing, placing, or discharging of a  
23 destructive device or bomb;  
24           (k)~~11~~. Armed burglary in violation of s. 810.02(2)(b)  
25 or specified burglary of a dwelling or structure in violation  
26 of s. 810.02(2)(c), or burglary with an assault or battery in  
27 violation of s. 810.02(2)(a);  
28           (l)~~12~~. Aggravated battery;  
29           (m)~~13~~. Any lewd or lascivious offense committed upon  
30 or in the presence of a person less than 16 years of age;  
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1        (n)~~14~~. Carrying, displaying, using, threatening, or  
2 attempting to use a weapon or firearm during the commission of  
3 a felony;

4        (o)~~15~~. Grand theft in violation of s. 812.014(2)(a);

5        (p)~~16~~. Possessing or discharging any weapon or firearm  
6 on school property in violation of s. 790.115;

7        (q)~~17~~. Home invasion robbery;

8        (r)~~18~~. Carjacking; or

9        (s)~~19~~. Grand theft of a motor vehicle in violation of  
10 s. 812.014(2)(c)6. or grand theft of a motor vehicle valued at  
11 \$20,000 or more in violation of s. 812.014(2)(b) if the child  
12 has a previous adjudication for grand theft of a motor vehicle  
13 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

14        ~~(b) With respect to any child who was 16 or 17 years  
15 of age at the time the alleged offense was committed, the  
16 state attorney may file an information when in the state  
17 attorney's judgment and discretion the public interest  
18 requires that adult sanctions be considered or imposed.  
19 However, the state attorney may not file an information on a  
20 child charged with a misdemeanor, unless the child has had at  
21 least two previous adjudications or adjudications withheld for  
22 delinquent acts, one of which involved an offense classified  
23 as a felony under state law.~~

24        (2) MANDATORY DIRECT FILE.--

25        ~~(a) With respect to any child who was 16 or 17 years  
26 of age at the time the alleged offense was committed, the  
27 state attorney shall file an information if the child has been  
28 previously adjudicated delinquent for an act classified as a  
29 felony, which adjudication was for the commission of, attempt  
30 to commit, or conspiracy to commit murder, sexual battery,  
31 armed or strong-armed robbery, carjacking, home-invasion~~

1 ~~robbery, aggravated battery, or aggravated assault, and the~~  
2 ~~child is currently charged with a second or subsequent violent~~  
3 ~~crime against a person.~~

4       (a)~~(b)~~ Notwithstanding subsection (1), regardless of  
5 the child's age at the time the alleged offense was committed,  
6 the state attorney must file an information with respect to  
7 any child who previously has been adjudicated for offenses  
8 which, if committed by an adult, would be felonies and such  
9 adjudications occurred at three or more separate delinquency  
10 adjudicatory hearings, and three of which resulted in  
11 residential commitments as defined in s. 985.03(47).

12       (b)~~(c)~~ The state attorney must file an information if  
13 a child, regardless of the child's age at the time the alleged  
14 offense was committed, is alleged to have committed an act  
15 that would be a violation of law if the child were an adult,  
16 that involves stealing a motor vehicle, including, but not  
17 limited to, a violation of s. 812.133, relating to carjacking,  
18 or s. 812.014(2)(c)6., relating to grand theft of a motor  
19 vehicle, and while the child was in possession of the stolen  
20 motor vehicle the child caused serious bodily injury to or the  
21 death of a person who was not involved in the underlying  
22 offense. For purposes of this section, the driver and all  
23 willing passengers in the stolen motor vehicle at the time  
24 such serious bodily injury or death is inflicted shall also be  
25 subject to mandatory transfer to adult court. "Stolen motor  
26 vehicle," for the purposes of this section, means a motor  
27 vehicle that has been the subject of any criminal wrongful  
28 taking. For purposes of this section, "willing passengers"  
29 means all willing passengers who have participated in the  
30 underlying offense.

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1 Section 3. Section 985.233, Florida Statutes, is  
2 amended to read:

3 985.233 Sentencing powers; procedures; alternatives  
4 for juveniles prosecuted as adults and adults under 18 years  
5 of age.--

6 (1) POWERS OF DISPOSITION.--

7 (a) A child, or an adult under 18 years of age, who is  
8 found to have committed a violation of law may, as an  
9 alternative to adult dispositions, be committed to the  
10 department for treatment in an appropriate program for  
11 juveniles ~~children~~ outside the adult correctional system or be  
12 placed in a community control program for juveniles.

13 (b) In determining whether to impose juvenile  
14 sanctions instead of adult sanctions, the court shall consider  
15 the following criteria:

16 1. The seriousness of the offense to the community and  
17 whether the community would best be protected by juvenile or  
18 adult sanctions.

19 2. Whether the offense was committed in an aggressive,  
20 violent, premeditated, or willful manner.

21 3. Whether the offense was against persons or against  
22 property, with greater weight being given to offenses against  
23 persons, especially if personal injury resulted.

24 4. The sophistication and maturity of the offender.

25 5. The record and previous history of the offender,  
26 including:

27 a. Previous contacts with the Department of  
28 Corrections, the Department of Juvenile Justice, the former  
29 Department of Health and Rehabilitative Services, the  
30 Department of Children and Family Services, law enforcement  
31 agencies, and the courts.

1           b. Prior periods of probation or community control.

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

4           d. Prior commitments to the Department of Juvenile  
5 Justice, the former Department of Health and Rehabilitative  
6 Services, the Department of Children and Family Services, or  
7 other facilities or institutions.

8           6. The prospects for adequate protection of the public  
9 and the likelihood of deterrence and reasonable rehabilitation  
10 of the offender if assigned to services and facilities of the  
11 Department of Juvenile Justice.

12           7. Whether the Department of Juvenile Justice has  
13 appropriate programs, facilities, and services immediately  
14 available.

15           8. Whether adult sanctions would provide more  
16 appropriate punishment and deterrence to further violations of  
17 law than the imposition of juvenile sanctions.

18           (2) PRESENTENCE INVESTIGATION REPORT.--

19           (a) Upon a plea of guilty, the court may refer the  
20 case to the department for investigation and recommendation as  
21 to the suitability of its programs for the offender ~~child~~.

22           (b) Upon completion of the presentence investigation  
23 report, it must be made available to the offender's ~~child's~~  
24 counsel and the state attorney by the department prior to the  
25 sentencing hearing.

26           (3) SENTENCING HEARING.--

27           (a) At the sentencing hearing the court shall receive  
28 and consider a presentence investigation report by the  
29 Department of Corrections regarding the suitability of the  
30 offender for disposition as an adult or as a juvenile. The  
31 presentence investigation report must include a comments

1 section prepared by the Department of Juvenile Justice, with  
2 its recommendations as to disposition. This report requirement  
3 may be waived by the offender.

4 (b) After considering the presentence investigation  
5 report, the court shall give all parties present at the  
6 hearing an opportunity to comment on the issue of sentence and  
7 any proposed rehabilitative plan. Parties to the case include  
8 the parent, guardian, or legal custodian of the offender; the  
9 offender's counsel; the state attorney; representatives of the  
10 Department of Corrections and the Department of Juvenile  
11 Justice; the victim or victim's representative;  
12 representatives of the school system; and the law enforcement  
13 officers involved in the case.

14 (c) The court may receive and consider any other  
15 relevant and material evidence, including other reports,  
16 written or oral, in its effort to determine the action to be  
17 taken with regard to the offender ~~child~~, and may rely upon  
18 such evidence to the extent of its probative value even if the  
19 evidence would not be competent in an adjudicatory hearing.

20 (d) The court shall notify any victim of the offense  
21 of the hearing and shall notify, or subpoena if appropriate,  
22 the parents, guardians, or legal custodians of the offender  
23 ~~child~~ to attend the disposition hearing.

24 (4) SENTENCING ALTERNATIVES.--

25 (a) Sentencing to adult sanctions.--

26 1. Cases prosecuted on indictment.--If the juvenile,  
27 or an adult under 18 years of age,~~child~~ is found to have  
28 committed the offense punishable by death or life  
29 imprisonment, the offender ~~child~~ shall be sentenced as an  
30 adult. If the offender ~~juvenile~~ is not found to have committed  
31 the indictable offense but is found to have committed a lesser

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

- 4 a. As an adult pursuant to this section;
- 5 b. Pursuant to chapter 958, notwithstanding any other  
6 provision of that chapter to the contrary; or
- 7 c. As a juvenile pursuant to this section.

8 2. Other cases.--If an adult under 18 years of age, or  
9 a juvenile,~~a child~~ who has been transferred for criminal  
10 prosecution pursuant to information or waiver of juvenile  
11 court jurisdiction is found to have committed a violation of  
12 state law or a lesser included offense for which he or she was  
13 charged as a part of the criminal episode, the court may  
14 sentence as follows:

- 15 a. As an adult pursuant to this section;
  - 16 b. Pursuant to chapter 958, notwithstanding any other  
17 provision of that chapter to the contrary; or
  - 18 c. As a juvenile pursuant to this section.
- 19 3. Any sentence imposing adult sanctions is presumed  
20 appropriate, and the court is not required to set forth  
21 specific findings or enumerate the criteria in this subsection  
22 as any basis for its decision to impose adult sanctions.

23 4. When a child has been transferred for criminal  
24 prosecution as an adult and has been found to have committed a  
25 violation of state law, the disposition of the case may  
26 include the enforcement of any restitution ordered in any  
27 juvenile proceeding.

28 (b) Sentencing to juvenile sanctions.--In order to use  
29 this paragraph, the court shall stay adjudication of guilt and  
30 instead shall adjudge the juvenile or adult under 18 years of  
31 age ~~child~~ to have committed a delinquent act. Adjudication of



1 delinquency shall not be deemed a conviction, nor shall it  
2 operate to impose any of the civil disabilities ordinarily  
3 resulting from a conviction. The court shall impose an adult  
4 sanction or a juvenile sanction and may not sentence the  
5 juvenile, or adult under 18 years of age,~~child~~ to a  
6 combination of adult and juvenile punishments. An adult  
7 sanction or a juvenile sanction may include enforcement of an  
8 order of restitution or community control previously ordered  
9 in any juvenile proceeding. However, if the court imposes a  
10 juvenile sanction and the department determines that the  
11 sanction is unsuitable for the juvenile, or adult under 18  
12 years of age ~~child~~, the department shall return custody of the  
13 offender ~~child~~ to the sentencing court for further  
14 proceedings, including the imposition of adult sanctions. Upon  
15 adjudicating a juvenile, or adult under 18 years of age,~~child~~  
16 delinquent under subsection (1), the court may:

17       1. Place the delinquent person ~~child~~ in a community  
18 control program under the supervision of the department for an  
19 indeterminate period of time until the delinquent person ~~child~~  
20 reaches the age of 19 years or sooner if discharged by order  
21 of the court.

22       2. Commit the delinquent person ~~child~~ to the  
23 department for treatment in an appropriate program for  
24 delinquent persons ~~children~~ for an indeterminate period of  
25 time until the delinquent person ~~child~~ is 21 or sooner if  
26 discharged by the department. The department shall notify the  
27 court of its intent to discharge no later than 14 days prior  
28 to discharge. Failure of the court to timely respond to the  
29 department's notice shall be considered approval for  
30 discharge.

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1           3. Order disposition pursuant to s. 985.231 as an  
2 alternative to youthful offender or adult sentencing if the  
3 court determines not to impose youthful offender or adult  
4 sanctions.

5           (c) Imposition of adult sanctions upon failure of  
6 juvenile sanctions.--If a delinquent person ~~child~~ proves not  
7 to be suitable to a community control program or for a  
8 treatment program under the provisions of subparagraph (b)2.,  
9 the court may revoke the previous adjudication, impose an  
10 adjudication of guilt, classify the delinquent person ~~child~~ as  
11 a youthful offender when appropriate, and impose any sentence  
12 which it may lawfully impose, giving credit for all time spent  
13 by the delinquent person ~~child~~ in the department.

14           (d) Recoupment of cost of care in juvenile justice  
15 facilities.--When the court orders commitment of a juvenile,  
16 or an adult under 18 years of age,~~child~~ to the Department of  
17 Juvenile Justice for treatment in any of the department's  
18 programs for delinquent persons ~~children~~, the court shall  
19 order the natural or adoptive parents of such delinquent  
20 person ~~child~~, the natural father of such delinquent person  
21 ~~child~~ born out of wedlock who has acknowledged his paternity  
22 in writing before the court, or guardian of such delinquent  
23 person's ~~child's~~ estate, if possessed of assets which under  
24 law may be disbursed for the care, support, and maintenance of  
25 the delinquent person ~~child~~, to pay fees to the department  
26 equal to the actual cost of the care, support, and maintenance  
27 of the delinquent person ~~child~~, unless the court determines  
28 that the parent or legal guardian of the delinquent person  
29 ~~child~~ is indigent. The court may reduce the fees or waive the  
30 fees upon a showing by the parent or guardian of an inability  
31 to pay the full cost of the care, support, and maintenance of

1 the delinquent person ~~child~~. In addition, the court may waive  
2 the fees if it finds that the delinquent person's ~~child's~~  
3 parent or guardian was the victim of the delinquent person's  
4 ~~child's~~ delinquent act or violation of law or if the court  
5 finds that the parent or guardian has made a diligent and good  
6 faith effort to prevent the delinquent person ~~child~~ from  
7 engaging in the delinquent act or violation of law. When the  
8 order affects the guardianship estate, a certified copy of the  
9 order shall be delivered to the judge having jurisdiction of  
10 the guardianship estate.

11 (e) Further proceedings heard in adult court.--When a  
12 child or an adult under 18 years of age is sentenced to  
13 juvenile sanctions, further proceedings involving those  
14 sanctions shall continue to be heard in the adult court.

15 (f) Definition.--For purposes of this section, "adult  
16 under 18 years of age" means a person under 18 years of age at  
17 the time an alleged offense was committed.

18  
19 It is the intent of the Legislature that the criteria and  
20 guidelines in this subsection are mandatory and that a  
21 determination of disposition under this subsection is subject  
22 to the right of the child or adult under 18 years of age to  
23 appellate review under s. 985.234.

24 Section 4. Section 985.417, Florida Statutes, is  
25 repealed.

26 Section 5. This act shall take effect October 1, 2000.  
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HOUSE SUMMARY

Reduces the age threshold for "child," "juvenile," or "youth" from 18 years of age to 16 years of age. Conforms direct file and disposition and sentencing provisions to the reduction. See bill for details.