

By the Committee on Fiscal Policy and Senator Lee

309-1840-00

1 A bill to be entitled
2 An act relating to habitual juvenile offenders;
3 providing a short title; amending s. 985.227,
4 F.S.; revising provisions with respect to
5 mandatory direct filing of information with
6 respect to certain juvenile offenders; amending
7 s. 985.233, F.S.; revising provisions with
8 respect to alternatives for juveniles
9 prosecuted as adults; reenacting s.
10 985.226(2)(b), F.S., relating to criteria for
11 waiver of juvenile court jurisdiction and
12 relating to hearing on motion to transfer for
13 prosecution as an adult, to incorporate the
14 amendments in reference thereto; providing an
15 effective date.

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

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19 Section 1. Short title.--This act may be cited as the
20 "Habitual Juvenile Offender Accountability Act."

21 Section 2. Subsection (2) of section 985.227, Florida
22 Statutes, is amended to read:

23 985.227 Prosecution of juveniles as adults by the
24 direct filing of an information in the criminal division of
25 the circuit court; discretionary criteria; mandatory
26 criteria.--

27 (2) MANDATORY DIRECT FILE.--

28 (a) With respect to any child who was 16 or 17 years
29 of age at the time the alleged offense was committed, the
30 state attorney shall file an information if the child has been
31 previously adjudicated delinquent for an act classified as a

1 felony, which adjudication was for the commission of, attempt
2 to commit, or conspiracy to commit murder, sexual battery,
3 armed or strong-armed robbery, carjacking, home-invasion
4 robbery, aggravated battery, or aggravated assault, and the
5 child is currently charged with a second or subsequent violent
6 crime against a person.

7 (b) With respect to any child 16 or 17 years of age at
8 the time an offense classified as a forcible felony, as
9 defined in s. 776.08, was committed, the state attorney shall
10 file an information if the child has previously been
11 adjudicated delinquent or had adjudication withheld for three
12 acts classified as felonies, each of which occurred at least
13 45 days apart from each other. This paragraph does not apply
14 when the state attorney has good cause to believe that
15 exceptional circumstances exist which preclude the just
16 prosecution of the juvenile in adult court.

17 (c)~~(b)~~ Notwithstanding subsection (1), regardless of
18 the child's age at the time the alleged offense was committed,
19 the state attorney must file an information with respect to
20 any child who previously has been adjudicated for offenses
21 which, if committed by an adult, would be felonies and such
22 adjudications occurred at three or more separate delinquency
23 adjudicatory hearings, and three of which resulted in
24 residential commitments as defined in s. 985.03(47).

25 (d)~~(c)~~ The state attorney must file an information if
26 a child, regardless of the child's age at the time the alleged
27 offense was committed, is alleged to have committed an act
28 that would be a violation of law if the child were an adult,
29 that involves stealing a motor vehicle, including, but not
30 limited to, a violation of s. 812.133, relating to carjacking,
31 or s. 812.014(2)(c)6., relating to grand theft of a motor

1 vehicle, and while the child was in possession of the stolen
2 motor vehicle the child caused serious bodily injury to or the
3 death of a person who was not involved in the underlying
4 offense. For purposes of this section, the driver and all
5 willing passengers in the stolen motor vehicle at the time
6 such serious bodily injury or death is inflicted shall also be
7 subject to mandatory transfer to adult court. "Stolen motor
8 vehicle," for the purposes of this section, means a motor
9 vehicle that has been the subject of any criminal wrongful
10 taking. For purposes of this section, "willing passengers"
11 means all willing passengers who have participated in the
12 underlying offense.

13 Section 3. Subsection (4) of section 985.233, Florida
14 Statutes, is amended to read:

15 985.233 Sentencing powers; procedures; alternatives
16 for juveniles prosecuted as adults.--

17 (4) SENTENCING ALTERNATIVES.--

18 (a) Sentencing to adult sanctions.--

19 1. Cases prosecuted on indictment.--If the child is
20 found to have committed the offense punishable by death or
21 life imprisonment, the child shall be sentenced as an adult.
22 If the juvenile is not found to have committed the indictable
23 offense but is found to have committed a lesser included
24 offense or any other offense for which he or she was indicted
25 as a part of the criminal episode, the court may sentence as
26 follows:

27 a. As an adult ~~pursuant to this section;~~

28 b. Pursuant to chapter 958, notwithstanding any other
29 provision of that chapter to the contrary; or

30 c. As a juvenile pursuant to this section.

31

1 2. Other cases.--If a child who has been transferred
2 for criminal prosecution pursuant to information or waiver of
3 juvenile court jurisdiction is found to have committed a
4 violation of state law or a lesser included offense for which
5 he or she was charged as a part of the criminal episode, the
6 court may sentence as follows:

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

11 3. Notwithstanding any other provision to the
12 contrary, if the state attorney is required to file a motion
13 to transfer and certify the juvenile for prosecution as an
14 adult pursuant to s. 985.226(2)(b) and that motion is granted,
15 or if the state attorney is required to file an information
16 pursuant to s. 985.227(2)(a) or (b), the court must impose
17 adult sanctions.

18 ~~4.3.~~ Any sentence imposing adult sanctions is presumed
19 appropriate, and the court is not required to set forth
20 specific findings or enumerate the criteria in this subsection
21 as any basis for its decision to impose adult sanctions.

22 ~~5.4.~~ When a child has been transferred for criminal
23 prosecution as an adult and has been found to have committed a
24 violation of state law, the disposition of the case may
25 include the enforcement of any restitution ordered in any
26 juvenile proceeding.

27 (b) Sentencing to juvenile sanctions.--For juveniles
28 transferred to adult court but who do not qualify for such
29 transfer pursuant to s. 985.226(2)(b) or s. 985.227(2)(a) or
30 (b), the court may impose juvenile sanctions under this
31 paragraph. If juvenile sentences are imposed, the court shall

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

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

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

30 3. Order disposition pursuant to s. 985.231 as an
31 alternative to youthful offender or adult sentencing if the

1 court determines not to impose youthful offender or adult
2 sanctions.

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

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

1 guardianship estate, a certified copy of the order shall be
2 delivered to the judge having jurisdiction of the guardianship
3 estate.

4 (e) Further proceedings heard in adult court.--When a
5 child is sentenced to juvenile sanctions, further proceedings
6 involving those sanctions shall continue to be heard in the
7 adult court.

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9 It is the intent of the Legislature that the criteria and
10 guidelines in this subsection are mandatory and that a
11 determination of disposition under this subsection is subject
12 to the right of the child to appellate review under s.
13 985.234.

14 Section 4. For the purpose of incorporating the
15 amendment to section 985.233, Florida Statutes, in references
16 thereto, paragraph (b) of subsection (2) of section 985.226,
17 Florida Statutes, is reenacted to read:

18 985.226 Criteria for waiver of juvenile court
19 jurisdiction; hearing on motion to transfer for prosecution as
20 an adult.--

21 (2) INVOLUNTARY WAIVER.--

22 (b) Mandatory waiver.--

23 1. If the child was 14 years of age or older, and if
24 the child has been previously adjudicated delinquent for an
25 act classified as a felony, which adjudication was for the
26 commission of, attempt to commit, or conspiracy to commit
27 murder, sexual battery, armed or strong-armed robbery,
28 carjacking, home-invasion robbery, aggravated battery,
29 aggravated assault, or burglary with an assault or battery,
30 and the child is currently charged with a second or subsequent
31 violent crime against a person; or

1 2. If the child was 14 years of age or older at the
2 time of commission of a fourth or subsequent alleged felony
3 offense and the child was previously adjudicated delinquent or
4 had adjudication withheld for or was found to have committed,
5 or to have attempted or conspired to commit, three offenses
6 that are felony offenses if committed by an adult, and one or
7 more of such felony offenses involved the use or possession of
8 a firearm or violence against a person;

9
10 the state attorney shall request the court to transfer and
11 certify the child for prosecution as an adult or shall provide
12 written reasons to the court for not making such request, or
13 proceed pursuant to s. 985.227(1). Upon the state attorney's
14 request, the court shall either enter an order transferring
15 the case and certifying the case for trial as if the child
16 were an adult or provide written reasons for not issuing such
17 an order.

18 Section 5. This act shall take effect upon becoming a
19 law.

20
21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
22 COMMITTEE SUBSTITUTE FOR
23 Senate Bill 722

24 Corrects technical problems in two sections of the bill.

25 Restores a provision in current law so that when a juvenile of
26 any age has three previous felony adjudications which occurred
27 at three separate hearings and resulted in three residential
28 commitments, the state attorney is required to direct file the
29 youth to adult court; however, the court continues to have
30 discretion to impose adult or juvenile sanctions.