

## CHAMBER ACTION

1 The Committee on Public Safety & Crime Prevention recommends the  
2 following:

3  
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to sentencing juveniles; amending s.  
8 985.227, F.S.; prohibiting the state attorney from  
9 entering into certain agreements involving the prosecution  
10 of juvenile offenders; amending s. 985.233, F.S.;  
11 providing that juveniles may be sentenced to juvenile  
12 sanctions or to a combination of juvenile and adult  
13 sanctions; directing the Department of Juvenile Justice to  
14 give the sentencing court a written report if it  
15 determines a juvenile sanction to be inappropriate for a  
16 child; providing a procedure for those instances when the  
17 Department of Juvenile Justice proposes to discharge the  
18 child from a juvenile probation, juvenile commitment, or  
19 juvenile postcommitment probation program before he or she  
20 becomes 21 years of age; providing additional procedures  
21 in circumstances where placement in a juvenile commitment  
22 program is a condition of sentence to a Department of  
23 Corrections adult probation program; requiring the

HB 1007

2004  
CS

24 Department of Juvenile Justice to notify the sentencing  
25 court of its intent to discharge the child no later than  
26 30 days before discharge; directing the department to file  
27 such notice in writing with the clerk of the court;  
28 directing the department to give a copy of the notice to  
29 specified persons; providing that a proposed discharge  
30 will be construed as approved if the sentencing court or  
31 state attorney fails to object to the discharge; directing  
32 the sentencing court to consider the educational needs of  
33 the child; requiring the court to prepare findings as to  
34 the child's educational needs; authorizing the court to  
35 order that certain specified educational goals be met;  
36 reenacting s. 985.04(5)(c) and (d), F.S., relating to the  
37 release of information concerning certain juveniles, for  
38 the purpose of incorporating the amendment to s. 985.227,  
39 F.S., in references thereto; reenacting ss. 985.225(3) and  
40 (4)(a), 985.226(1) and (4)(a), 985.227(2)(d) and (3)(a)  
41 and (c), and 985.31(3)(k), F.S., relating to sentencing of  
42 juveniles pursuant to indictment, sentencing of juveniles  
43 pursuant to waiver of jurisdiction, sentencing of  
44 juveniles pursuant to direct file proceedings, and the  
45 commitment of certain juvenile offenders, respectively,  
46 for the purpose of incorporating the amendment to s.  
47 985.233, F.S., in references thereto; providing an  
48 effective date.

49  
50 Be It Enacted by the Legislature of the State of Florida:  
51

HB 1007

2004  
CS

52 Section 1. Subsection (1) of section 985.227, Florida  
53 Statutes, is amended, and for the purpose of incorporating the  
54 amendment to section 985.233, Florida Statutes, in references  
55 thereto, paragraph (d) of subsection (2) and paragraphs (a) and  
56 (c) of subsection (3) of section 985.227, Florida Statutes, are  
57 reenacted, to read:

58 985.227 Prosecution of juveniles as adults by the direct  
59 filing of an information in the criminal division of the circuit  
60 court; discretionary criteria; mandatory criteria.--

61 (1) DISCRETIONARY DIRECT FILE; CRITERIA.--

62 (a) With respect to any child who was 14 or 15 years of  
63 age at the time the alleged offense was committed, the state  
64 attorney may file an information when in the state attorney's  
65 judgment and discretion the public interest requires that adult  
66 sanctions be considered or imposed and when the offense charged  
67 is for the commission of, attempt to commit, or conspiracy to  
68 commit:

- 69 1. Arson;
- 70 2. Sexual battery;
- 71 3. Robbery;
- 72 4. Kidnapping;
- 73 5. Aggravated child abuse;
- 74 6. Aggravated assault;
- 75 7. Aggravated stalking;
- 76 8. Murder;
- 77 9. Manslaughter;
- 78 10. Unlawful throwing, placing, or discharging of a  
79 destructive device or bomb;

HB 1007

2004  
CS

80 11. Armed burglary in violation of s. 810.02(2)(b) or  
81 specified burglary of a dwelling or structure in violation of s.  
82 810.02(2)(c), or burglary with an assault or battery in  
83 violation of s. 810.02(2)(a);

84 12. Aggravated battery;

85 13. Any lewd or lascivious offense committed upon or in  
86 the presence of a person less than 16 years of age;

87 14. Carrying, displaying, using, threatening, or  
88 attempting to use a weapon or firearm during the commission of a  
89 felony;

90 15. Grand theft in violation of s. 812.014(2)(a);

91 16. Possessing or discharging any weapon or firearm on  
92 school property in violation of s. 790.115;

93 17. Home invasion robbery;

94 18. Carjacking; or

95 19. Grand theft of a motor vehicle in violation of s.  
96 812.014(2)(c)6. or grand theft of a motor vehicle valued at  
97 \$20,000 or more in violation of s. 812.014(2)(b) if the child  
98 has a previous adjudication for grand theft of a motor vehicle  
99 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

100 (b) With respect to any child who was 16 or 17 years of  
101 age at the time the alleged offense was committed, the state  
102 attorney may file an information when in the state attorney's  
103 judgment and discretion the public interest requires that adult  
104 sanctions be considered or imposed. However, the state attorney  
105 may not file an information on a child charged with a  
106 misdemeanor, unless the child has had at least two previous  
107 adjudications or adjudications withheld for delinquent acts, one

HB 1007

2004  
CS

108 | of which involved an offense classified as a felony under state  
109 | law.

110 | (c) The state attorney is prohibited from offering to  
111 | decline the prosecution of a juvenile as an adult in exchange  
112 | for the child's agreement to waive his or her right to release  
113 | from secure detention under the time limitations provided in s.  
114 | 985.215(5).

115 | (2) MANDATORY DIRECT FILE.--

116 | (d)1. With respect to any child who was 16 or 17 years of  
117 | age at the time the alleged offense was committed, the state  
118 | attorney shall file an information if the child has been charged  
119 | with committing or attempting to commit an offense listed in s.  
120 | 775.087(2)(a)1.a.-g., and, during the commission of or attempt  
121 | to commit the offense, the child:

122 | a. Actually possessed a firearm or destructive device, as  
123 | those terms are defined in s. 790.001.

124 | b. Discharged a firearm or destructive device, as  
125 | described in s. 775.087(2)(a)2.

126 | c. Discharged a firearm or destructive device, as  
127 | described in s. 775.087(2)(a)3., and, as a result of the  
128 | discharge, death or great bodily harm was inflicted upon any  
129 | person.

130 | 2. Upon transfer, any child who is:

131 | a. Charged pursuant to sub-subparagraph 1.a. and who has  
132 | been previously adjudicated or had adjudication withheld for a  
133 | forcible felony offense or any offense involving a firearm, or  
134 | who has been previously placed in a residential commitment

HB 1007

2004  
CS

135 program, shall be subject to sentencing under s. 775.087(2)(a),  
136 notwithstanding s. 985.233.

137 b. Charged pursuant to sub-subparagraph 1.b. or sub-  
138 subparagraph 1.c., shall be subject to sentencing under s.  
139 775.087(2)(a), notwithstanding s. 985.233.

140 3. Upon transfer, any child who is charged pursuant to  
141 this paragraph, but who does not meet the requirements specified  
142 in subparagraph 2., shall be sentenced pursuant to s. 985.233;  
143 however, if the court imposes a juvenile sanction, the court  
144 must commit the child to a high-risk or maximum-risk juvenile  
145 facility.

146 4. This paragraph shall not apply if the state attorney  
147 has good cause to believe that exceptional circumstances exist  
148 which preclude the just prosecution of the child in adult court.

149 5. The Department of Corrections shall make every  
150 reasonable effort to ensure that any child 16 or 17 years of age  
151 who is convicted and sentenced under this paragraph be  
152 completely separated such that there is no physical contact with  
153 adult offenders in the facility, to the extent that it is  
154 consistent with chapter 958.

155 (3) EFFECT OF DIRECT FILE.--

156 (a) Once a child has been transferred for criminal  
157 prosecution pursuant to an information and has been found to  
158 have committed the presenting offense or a lesser included  
159 offense, the child shall be handled thereafter in every respect  
160 as if an adult for any subsequent violation of state law, unless  
161 the court imposes juvenile sanctions under s. 985.233.

HB 1007

2004  
CS

162 (c) When a child has been transferred for criminal  
 163 prosecution as an adult and has been found to have committed a  
 164 violation of state law, the disposition of the case may be made  
 165 under s. 985.233 and may include the enforcement of any  
 166 restitution ordered in any juvenile proceeding.

167 Section 2. Paragraph (b) of subsection (4) of section  
 168 985.233, Florida Statutes, is amended to read:

169 985.233 Sentencing powers; procedures; alternatives for  
 170 juveniles prosecuted as adults.--

171 (4) SENTENCING ALTERNATIVES.--

172 (b) *Sentencing to juvenile sanctions*.--For juveniles  
 173 transferred to adult court but who do not qualify for ~~such~~  
 174 transfer under ~~pursuant to~~ s. 985.226(2)(b) or s. 985.227(2)(a)  
 175 or (b), the court may impose juvenile sanctions under this  
 176 paragraph. If juvenile sentences are imposed, the court shall,  
 177 under ~~pursuant to~~ this paragraph, adjudge the child to have  
 178 committed a delinquent act. Adjudication of delinquency shall  
 179 not be deemed a conviction, nor shall it operate to impose any  
 180 of the civil disabilities ordinarily resulting from a  
 181 conviction. The court shall impose ~~an adult sanction or a~~  
 182 juvenile sanction or ~~and may not~~ sentence the child to a  
 183 combination of adult and juvenile sanctions ~~punishments~~. ~~An~~  
 184 ~~adult sanction or~~ A juvenile sanction, or a combination of adult  
 185 and juvenile sanctions, may include enforcement of an order of  
 186 restitution or probation previously ordered in any juvenile  
 187 proceeding. However, if the court imposes a juvenile sanction  
 188 and the department determines that the sanction is inappropriate  
 189 ~~unsuitable~~ for the child, the department shall provide the

HB 1007

2004  
CS

190 sentencing court with a written report outlining the basis for  
 191 its objections to the juvenile sanction and shall simultaneously  
 192 provide a copy to the state attorney and the child's defense  
 193 counsel. The department shall return custody of the child to the  
 194 sentencing court for further proceedings, including the  
 195 imposition of a combination of adult and juvenile sanctions or  
 196 adult sanctions.

197 1. Upon adjudicating a child delinquent under subsection  
 198 (1), the court may:

199 a.1. Place the child in a probation program under the  
 200 supervision of the department for an indeterminate period of  
 201 time until the child reaches the age of 21 ~~19~~ years or sooner if  
 202 discharged by the department ~~order of the court~~. If, at any time  
 203 before the child becomes 21 years of age, the department  
 204 proposes to discharge the child from a probation program, the  
 205 department shall notify the sentencing court of its intent to  
 206 discharge the child no later than 30 days before discharge. The  
 207 department shall file a written notice of its proposal with the  
 208 clerk of the court and give a copy of the written notice to the  
 209 sentencing judge, the state attorney, the Department of  
 210 Corrections, and the child's defense counsel at the time it  
 211 files the notice with the clerk of the court. Failure of the  
 212 sentencing court or the state attorney to object to the  
 213 department's notice of discharge within the 30-day time period  
 214 shall be construed as approval of the proposed discharge. If  
 215 there is no objection, the clerk of the court shall note on the  
 216 court file that the case is closed.

HB 1007

2004  
CS

217 b.2- Commit the child to the department for treatment in  
 218 an appropriate program for children for an indeterminate period  
 219 of time until the child reaches the age of ~~is~~ 21 or sooner if  
 220 discharged by the department. If, at any time before the child  
 221 becomes 21 years of age, the department proposes to discharge  
 222 the child from a commitment or postcommitment probation program,  
 223 the department shall notify the sentencing court of its intent  
 224 to discharge the child no later than 30 ~~14~~ days before ~~prior to~~  
 225 discharge. The department shall file a written notice of its  
 226 proposal with the clerk of the court and give a copy of the  
 227 written notice to the sentencing judge, the state attorney, the  
 228 Department of Corrections, and the child's defense counsel at  
 229 the time it files the notice with the clerk of the court.  
 230 Failure of the sentencing court or the state attorney to object  
 231 within the 30-day time limit ~~timely respond~~ to the department's  
 232 notice shall be considered approval for discharge. If there is  
 233 no objection, the clerk of the court shall close the case.

234 c. Place the child on probation under the supervision of  
 235 the Department of Corrections and commit the child to the  
 236 department for treatment in an appropriate program for children  
 237 for an indeterminate period of time until the child reaches the  
 238 age of 21 years or sooner if discharged by the department. If,  
 239 at any time before the child becomes 21 years of age, the  
 240 department proposes to discharge the child from the commitment  
 241 program, the department shall notify the sentencing court of its  
 242 intent to discharge the child no later than 30 days before  
 243 discharge. The department shall file a written notice of its  
 244 proposal with the clerk of the court and give a copy of the

HB 1007

2004  
CS

245 written notice to the sentencing judge, the state attorney, the  
 246 Department of Corrections, and the child's defense counsel at  
 247 the time it files the notice with the clerk of the court.  
 248 Failure of the sentencing court or the state attorney to object  
 249 to the department's notice of discharge within the 30-day time  
 250 period shall be construed as approval of the proposed discharge.  
 251 However, the department may not discharge the child until the  
 252 Department of Corrections meets with the child to explain the  
 253 terms of probation. Failure to successfully complete the  
 254 juvenile commitment program constitutes a violation of adult  
 255 probation.

256 d.3- Order disposition pursuant to s. 985.231 as an  
 257 alternative to youthful offender or adult sentencing if the  
 258 court determines not to impose youthful offender or adult  
 259 sanctions.

260 2. Upon sentencing a child to juvenile sanctions or a  
 261 combination of juvenile and adult sanctions under subparagraph  
 262 1., the court shall consider the educational needs assessment  
 263 conducted under s. 985.224(1) and (2) and make a finding of the  
 264 child's educational status. The court's finding shall include,  
 265 but is not limited to, the child's academic strengths and  
 266 abilities and the child's unmet or special education needs. The  
 267 court may order, as a condition of probation or commitment, that  
 268 the child must attain an appropriate educational goal. The  
 269 appropriate educational goals may include, but are not limited  
 270 to:

- 271 a. Receiving a high school diploma or its equivalent.
- 272 b. Successful completion of a literacy course.

HB 1007

2004  
CS

- 273 |       c. Successful completion of a vocational course.
- 274 |       d. Successful completion of the child's current grade, if
- 275 | the child is enrolled in school.
- 276 |       e. Enrollment in an apprenticeship or similar program.
- 277 |

278 | It is the intent of the Legislature that the criteria and  
 279 | guidelines in this subsection are mandatory and that a  
 280 | determination of disposition under this subsection is subject to  
 281 | the right of the child to appellate review under s. 985.234.

282 |       Section 3. For the purpose of incorporating the amendment  
 283 | to section 985.233, Florida Statutes, in references thereto,  
 284 | subsection (3) and paragraph (a) of subsection (4) of section  
 285 | 985.225, Florida Statutes, are reenacted to read:

286 |       985.225 Indictment of a juvenile.--

287 |       (3) If the child is found to have committed the offense  
 288 | punishable by death or by life imprisonment, the child shall be  
 289 | sentenced as an adult. If the juvenile is not found to have  
 290 | committed the indictable offense but is found to have committed  
 291 | a lesser included offense or any other offense for which he or  
 292 | she was indicted as a part of the criminal episode, the court  
 293 | may sentence pursuant to s. 985.233.

294 |       (4)(a) Once a child has been indicted pursuant to this  
 295 | subsection and has been found to have committed any offense for  
 296 | which he or she was indicted as a part of the criminal episode,  
 297 | the child shall be handled thereafter in every respect as if an  
 298 | adult for any subsequent violation of state law, unless the  
 299 | court imposes juvenile sanctions under s. 985.233.

HB 1007

2004  
CS

300 Section 4. For the purpose of incorporating the amendment  
301 to section 985.233, Florida Statutes, in references thereto,  
302 subsection (1) and paragraph (a) of subsection (4) of section  
303 985.226, Florida Statutes, are reenacted to read:

304 985.226 Criteria for waiver of juvenile court  
305 jurisdiction; hearing on motion to transfer for prosecution as  
306 an adult.--

307 (1) VOLUNTARY WAIVER.--The court shall transfer and  
308 certify a child's criminal case for trial as an adult if the  
309 child is alleged to have committed a violation of law and, prior  
310 to the commencement of an adjudicatory hearing, the child,  
311 joined by a parent or, in the absence of a parent, by the  
312 guardian or guardian ad litem, demands in writing to be tried as  
313 an adult. Once a child has been transferred for criminal  
314 prosecution pursuant to a voluntary waiver hearing and has been  
315 found to have committed the presenting offense or a lesser  
316 included offense, the child shall be handled thereafter in every  
317 respect as an adult for any subsequent violation of state law,  
318 unless the court imposes juvenile sanctions under s.  
319 985.233(4)(b).

320 (4) EFFECT OF ORDER WAIVING JURISDICTION.--

321 (a) Once a child has been transferred for criminal  
322 prosecution pursuant to an involuntary waiver hearing and has  
323 been found to have committed the presenting offense or a lesser  
324 included offense, the child shall thereafter be handled in every  
325 respect as an adult for any subsequent violation of state law,  
326 unless the court imposes juvenile sanctions under s. 985.233.

HB 1007

2004  
CS

327 Section 5. For the purpose of incorporating the amendment  
328 to section 985.233, Florida Statutes, in a reference thereto,  
329 paragraph (k) of subsection (3) of section 985.31, Florida  
330 Statutes, is reenacted to read:

331 985.31 Serious or habitual juvenile offender.--

332 (3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND  
333 TREATMENT.--

334 (k) Any commitment of a child to the department for  
335 placement in a serious or habitual juvenile offender program or  
336 facility shall be for an indeterminate period of time, but the  
337 time shall not exceed the maximum term of imprisonment which an  
338 adult may serve for the same offense. Notwithstanding the  
339 provisions of ss. 743.07 and 985.231(1)(d), a serious or  
340 habitual juvenile offender shall not be held under commitment  
341 from a court pursuant to this section, s. 985.231, or s. 985.233  
342 after becoming 21 years of age. This provision shall apply only  
343 for the purpose of completing the serious or habitual juvenile  
344 offender program pursuant to this chapter and shall be used  
345 solely for the purpose of treatment.

346 Section 6. For the purpose of incorporating the amendment  
347 to section 985.227, Florida Statutes, in references thereto,  
348 paragraphs (c) and (d) of subsection (5) of section 985.04,  
349 Florida Statutes, are reenacted to read:

350 985.04 Oaths; records; confidential information.--

351 (5) Notwithstanding any other provisions of this part, the  
352 name, photograph, address, and crime or arrest report of a  
353 child:

HB 1007

2004  
CS

354 (c) Transferred to the adult system pursuant to s.  
355 985.227, indicted pursuant to s. 985.225, or waived pursuant to  
356 s. 985.226;

357 (d) Taken into custody by a law enforcement officer for a  
358 violation of law subject to the provisions of s. 985.227(2)(b)  
359 or (d); or

360  
361 shall not be considered confidential and exempt from the  
362 provisions of s. 119.07(1) solely because of the child's age.

363 Section 7. This act shall take effect July 1, 2004.