

By Senator Campbell

32-944-04

1 A bill to be entitled
2 An act relating to the sentencing of minors;
3 amending ss. 985.225 and 985.233, F.S.;
4 limiting the age at which a minor convicted of
5 an offense punishable by death or life
6 imprisonment may be sentenced as an adult;
7 amending ss. 985.226 and 985.227, F.S.;
8 revising requirements for the state attorney
9 with respect to prosecuting a minor as an adult
10 for certain violent felonies and for an offense
11 punishable by death or life imprisonment;
12 creating s. 985.2335, F.S.; requiring that the
13 court commit a child of a specified age or
14 younger to the Department of Juvenile Justice
15 or to a maximum-risk juvenile facility
16 following the child's conviction of an offense
17 that, if committed by an adult, would be
18 punishable by death or life imprisonment;
19 requiring the court to conduct a hearing after
20 the child has reached a specified age to
21 determine whether the child is rehabilitated;
22 providing for the child to be placed on
23 conditional release or sentenced to life
24 imprisonment with eligibility for parole as an
25 adult offender; providing an effective date.

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

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29 Section 1. Section 985.225, Florida Statutes, is
30 amended to read:

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1 985.225 Indictment of a child 17 years of age
2 juvenile.--

3 (1) A child who is 17 years of age at the time of the
4 offense and ~~of any age~~ who is charged with a violation of
5 state law punishable by death or by life imprisonment is
6 subject to the jurisdiction of the court as set forth in s.
7 985.219(8) unless and until an indictment on the charge is
8 returned by the grand jury. When such indictment is returned,
9 the petition for delinquency, if any, must be dismissed and
10 the child must be tried and handled in every respect as an
11 adult:

12 (a) On the offense punishable by death or by life
13 imprisonment; and

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

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

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

1 to have committed the indictable offense but is found to have
2 committed a lesser included offense or any other offense for
3 which he or she was indicted as a part of the criminal
4 episode, the court may sentence pursuant to s. 985.233.

5 (4)(a) Once a child has been indicted pursuant to this
6 subsection and has been found to have committed any offense
7 for which he or she was indicted as a part of the criminal
8 episode, the child shall be handled thereafter in every
9 respect as if an adult for any subsequent violation of state
10 law, unless the court imposes juvenile sanctions under s.
11 985.233.

12 (b) When a child has been indicted pursuant to this
13 subsection the court shall immediately transfer and certify to
14 the adult circuit court all felony cases pertaining to the
15 child, for prosecution of the child as an adult, which have
16 not yet resulted in a plea of guilty or nolo contendere or in
17 which a finding of guilt has not been made. If the child is
18 acquitted of all charged offenses or lesser included offenses
19 contained in the indictment case, all felony cases that were
20 transferred to adult court pursuant to this paragraph shall be
21 subject to the same penalties such cases were subject to
22 before being transferred to adult court.

23 Section 2. Subsection (2) of section 985.226, Florida
24 Statutes, is amended to read:

25 985.226 Criteria for waiver of juvenile court
26 jurisdiction; hearing on motion to transfer for prosecution as
27 an adult.--

28 (2) INVOLUNTARY WAIVER.--

29 (a) Discretionary waiver.--Except as provided in
30 paragraph (b), the state attorney may file a motion requesting
31 the court to transfer the child for criminal prosecution if

1 the child was 17 ~~14~~ years of age ~~or older~~ at the time the
2 alleged delinquent act or violation of law was committed.

3 (b) Mandatory waiver.--

4 1. If the child was 17 ~~14~~ years of age ~~or older~~, and
5 if the child has been previously adjudicated delinquent for an
6 act classified as a felony, which adjudication was for the
7 commission of, attempt to commit, or conspiracy to commit
8 murder, sexual battery, armed or strong-armed robbery,
9 carjacking, home-invasion robbery, aggravated battery,
10 aggravated assault, or burglary with an assault or battery,
11 and the child is currently charged with a second or subsequent
12 violent crime against a person; or

13 2. If the child was 17 ~~14~~ years of age ~~or older~~ at the
14 time of commission of a fourth or subsequent alleged felony
15 offense and the child was previously adjudicated delinquent or
16 had adjudication withheld for or was found to have committed,
17 or to have attempted or conspired to commit, three offenses
18 that are felony offenses if committed by an adult, and one or
19 more of such felony offenses involved the use or possession of
20 a firearm or violence against a person;

21
22 the state attorney shall request the court to transfer and
23 certify the child for prosecution as an adult or shall provide
24 written reasons to the court for not making such request, or
25 proceed pursuant to s. 985.227(1). Upon the state attorney's
26 request, the court shall either enter an order transferring
27 the case and certifying the case for trial as if the child
28 were an adult or provide written reasons for not issuing such
29 an order.

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1 Section 3. Paragraph (a) of subsection (1) and
2 paragraph (c) of subsection (2) of section 985.227, Florida
3 Statutes, are amended to read:

4 985.227 Prosecution of juveniles as adults by the
5 direct filing of an information in the criminal division of
6 the circuit court; discretionary criteria; mandatory
7 criteria.--

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

9 (a) With respect to any child who was 17 ~~14 or 15~~
10 years of age at the time the alleged offense was committed,
11 the state attorney may file an information when in the state
12 attorney's judgment and discretion the public interest
13 requires that adult sanctions be considered or imposed and
14 when the offense charged is for the commission of, attempt to
15 commit, or conspiracy to commit:

16 1. Arson;

17 2. Sexual battery;

18 3. Robbery;

19 4. Kidnapping;

20 5. Aggravated child abuse;

21 6. Aggravated assault;

22 7. Aggravated stalking;

23 8. Murder;

24 9. Manslaughter;

25 10. Unlawful throwing, placing, or discharging of a
26 destructive device or bomb;

27 11. Armed burglary in violation of s. 810.02(2)(b) or
28 specified burglary of a dwelling or structure in violation of
29 s. 810.02(2)(c), or burglary with an assault or battery in
30 violation of s. 810.02(2)(a);

31 12. Aggravated battery;

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

3 14. Carrying, displaying, using, threatening, or
4 attempting to use a weapon or firearm during the commission of
5 a felony;

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

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

9 17. Home invasion robbery;

10 18. Carjacking; or

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

16 (2) MANDATORY DIRECT FILE.--

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

1 section, means a motor vehicle that has been the subject of
2 any criminal wrongful taking. For purposes of this section,
3 "willing passengers" means all willing passengers who have
4 participated in the underlying offense.

5 Section 4. Paragraph (a) of subsection (4) of section
6 985.233, Florida Statutes, is amended to read:

7 985.233 Sentencing powers; procedures; alternatives
8 for juveniles prosecuted as adults.--

9 (4) SENTENCING ALTERNATIVES.--

10 (a) Sentencing to adult sanctions.--

11 1. Cases prosecuted on indictment.--If the child was
12 at least 17 years of age at the time of the offense and is
13 found to have committed the offense punishable by death or
14 life imprisonment, the child shall be sentenced as an adult.
15 If the juvenile is not found to have committed the indictable
16 offense but is found to have committed a lesser included
17 offense or any other offense for which he or she was indicted
18 as a part of the criminal episode, the court may sentence as
19 follows:

20 a. As an adult;

21 b. Pursuant to chapter 958; or

22 c. As a juvenile pursuant to this section.

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

29 a. As an adult;

30 b. Pursuant to chapter 958; or

31 c. As a juvenile pursuant to this section.

1 3. Notwithstanding any other provision to the
2 contrary, if the state attorney is required to file a motion
3 to transfer and certify the juvenile for prosecution as an
4 adult pursuant to s. 985.226(2)(b) and that motion is granted,
5 or if the state attorney is required to file an information
6 pursuant to s. 985.227(2)(a) or (b), the court must impose
7 adult sanctions.

8 4. Any sentence imposing adult sanctions is presumed
9 appropriate, and the court is not required to set forth
10 specific findings or enumerate the criteria in this subsection
11 as any basis for its decision to impose adult sanctions.

12 5. When a child has been transferred for criminal
13 prosecution as an adult and has been found to have committed a
14 violation of state law, the disposition of the case may
15 include the enforcement of any restitution ordered in any
16 juvenile proceeding.

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

23 Section 5. Section 985.2335, Florida Statutes, is
24 created to read:

25 985.2335 Sentencing of a child 16 years of age or
26 younger who is convicted of an offense punishable by death or
27 life imprisonment.--

28 (1) Notwithstanding any other law, if a child who is
29 16 years of age or younger at the time the offense was
30 committed is sentenced for an offense that, if committed by an
31 adult, would be punishable by death or life imprisonment, the

1 court shall sentence the child for the offense and for all
2 other felonies or misdemeanors based on the same act or
3 transaction, or based on one or more acts or transactions
4 connected with the offense punishable by death or by life
5 imprisonment, as follows:

6 (a) The child shall be committed to the department for
7 evaluation and treatment in an intensive residential treatment
8 program until the child reaches 21 years of age. The intensive
9 residential treatment program must be a program designed to
10 promote rehabilitation, prevent recidivism, and provide for
11 the child's successful return to society; or

12 (b) The child shall be committed to a maximum-risk
13 residential juvenile correctional facility until the child
14 reaches 21 years of age, and the child may not be placed on
15 temporary or conditional release.

16 (2) Within a reasonable time after reaching 21 years
17 of age, the department shall return the child to the
18 sentencing court for a hearing. If the court finds that the
19 child is sufficiently rehabilitated so that the public's
20 safety is reasonably assured, the child shall be placed on
21 conditional release for a term of at least 10 years. If the
22 court finds that the child is not sufficiently rehabilitated
23 so that the public's safety is reasonably assured, the child
24 shall be sentenced to life imprisonment with eligibility for
25 parole under the same conditions applicable to an adult
26 offender.

27 Section 6. This act shall take effect July 1, 2004.
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SENATE SUMMARY

Revises the age at which an offender who is a minor may be prosecuted and sentenced as an adult when the offender commits certain violent felonies or an offense punishable by death or life imprisonment if such offense were committed by an adult. Requires that an offender 16 years of age or younger who commits an offense punishable by death or life imprisonment be committed to the Department of Juvenile Justice or to a maximum-risk juvenile facility until the offender is 21 years of age. Requires a hearing when the offender reaches 21 years of age. Requires that the offender be placed on conditional release for at least 10 years if the court finds that the offender is rehabilitated. If the offender is not rehabilitated, requires that the offender be sentenced to life imprisonment with eligibility for parole as an adult offender. (See bill for details.)