

By Senator Smith

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1 A bill to be entitled
2 An act relating to criminal prosecution of juveniles;
3 amending s. 985.557, F.S.; providing additional
4 circumstances for the direct filing of charges against
5 certain juveniles; providing criteria for determining
6 when a case against a juvenile should be recommended
7 to the court to be transferred for criminal
8 prosecution; providing criteria for consideration of a
9 child's request to an adult court to return a criminal
10 case to the juvenile justice system; providing an
11 effective date.

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

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15 Section 1. Paragraph (c) is added to subsection (1) of
16 section 985.557, Florida Statutes, subsection (4) of that
17 section is amended, present subsection (5) of that section is
18 redesignated as subsection (6) and amended, and a new subsection
19 (5) is added to that section, to read:

20 985.557 Direct filing of an information; discretionary and
21 mandatory criteria.—

22 (1) DISCRETIONARY DIRECT FILE.—

23 (c) Except as provided in paragraph (b), the state attorney
24 may file an information against a child otherwise eligible under
25 this section if the child has prior felony or misdemeanor
26 adjudications or adjudications withheld.

27 (4) DIRECT-FILE CRITERIA ~~POLICIES AND GUIDELINES~~.—

28 (a) When a child is eligible to have an information filed
29 by the state attorney under subsection (1), the state attorney

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30 shall use the following criteria to determine whether to file an
31 information:

32 1. The seriousness of the alleged offense and whether
33 transferring the child is necessary for protection of the
34 community, including:

35 a. The recommendation of the department, through review and
36 consideration of the recommendations of the department's
37 caseworker.

38 b. The probable cause as found in the report, affidavit, or
39 complaint, including:

40 (I) Whether the alleged offense was committed in an
41 aggressive, violent, premeditated, or willful manner.

42 (II) Whether the alleged offense was against persons or
43 against property, with greater weight being given to offenses
44 against persons, especially if personal injury resulted.

45 (III) The strength of the state's evidence.

46 c. The sophistication and maturity of the child.

47 2. The record and previous history of the child, including:

48 a. Previous contacts with the department, the Department of
49 Corrections, the former Department of Health and Rehabilitative
50 Services, the Department of Children and Family Services, other
51 law enforcement agencies, and courts.

52 b. Prior periods of probation.

53 c. Prior adjudications that the child committed a
54 delinquent act or violation of law, with greater weight being
55 given if the child has previously been found by a court to have
56 committed a delinquent act or violation of law involving
57 violence to persons.

58 d. Prior commitments to institutions of the department, the

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59 Department of Corrections, or agencies under contract with
60 either department.

61 e. Patterns of criminality or patterns of escalation.

62 3. The prospects for adequate protection of the public and
63 the likelihood of reasonable rehabilitation of the child, if the
64 child is found to have committed the alleged offense, by the use
65 of procedures, services, and facilities currently available to
66 the juvenile court.

67 4. Cost-effective alternatives available to divert the
68 child from the criminal and juvenile justice systems and offer
69 rehabilitative services for the child.

70 (b) If the state attorney files an information against a
71 child under this section, the state attorney shall file with the
72 court his or her written explanation, addressing the factors
73 listed in paragraph (a), as to why the child should be
74 transferred for criminal prosecution. ~~Each state attorney shall~~
75 ~~develop written policies and guidelines to govern determinations~~
76 ~~for filing an information on a juvenile, to be submitted to the~~
77 ~~Executive Office of the Governor, the President of the Senate,~~
78 ~~and the Speaker of the House of Representatives not later than~~
79 ~~January 1 of each year.~~

80 (5) REVERSE WAIVER.—Any child over whom the adult court has
81 obtained original jurisdiction may request, in writing, a
82 hearing to determine whether the child shall remain in adult
83 court. The adult court shall retain jurisdiction unless the
84 child proves by a preponderance of evidence all of the
85 following:

86 (a) The child could obtain services available in the
87 juvenile justice system which could lessen the possibility of

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88 the child reoffending in the future.

89 (b) The child's best interests would be served by
90 prosecuting the case in juvenile court.

91 (c) The child could receive juvenile sanctions that would
92 provide adequate safety and protection for the community.

93 (d) The child is not charged with a felony that is
94 punishable by death or life imprisonment.

95 (e) The child has not previously been convicted and
96 sentenced as an adult.

97 (6) ~~(5)~~ CHARGES INCLUDED.—An information filed pursuant to
98 this section may include all charges that are based on the same
99 act, criminal episode, or transaction as the primary offenses.
100 Section 2. This act shall take effect July 1, 2011.