

HB 655

2011

1 A bill to be entitled
2 An act relating to criminal prosecution of juveniles;
3 amending s. 985.557, F.S.; prohibiting the filing of an
4 information on a child otherwise eligible if it is the
5 child's first offense unless there are compelling reasons;
6 requiring such reasons to be stated in writing; providing
7 criteria for determining when a case against a juvenile
8 should be recommended to the court to be transferred for
9 prosecution in adult court; providing criteria for
10 consideration of a child's request to an adult court to
11 return a criminal case to the juvenile justice system;
12 providing an effective date.

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

15
16 Section 1. Subsections (1) and (4) of section 985.557,
17 Florida Statutes, are amended, present subsection (5) of that
18 section is renumbered as subsection (6) and amended, and a new
19 subsection (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 (a) With respect to any child who was 14 or 15 years of
24 age at the time the alleged offense was committed, the state
25 attorney may file an information when in the state attorney's
26 judgment and discretion the public interest requires that adult
27 sanctions be considered or imposed and when the offense charged
28 is for the commission of, attempt to commit, or conspiracy to

HB 655

2011

- 29 | commit:
- 30 | 1. Arson;
- 31 | 2. Sexual battery;
- 32 | 3. Robbery;
- 33 | 4. Kidnapping;
- 34 | 5. Aggravated child abuse;
- 35 | 6. Aggravated assault;
- 36 | 7. Aggravated stalking;
- 37 | 8. Murder;
- 38 | 9. Manslaughter;
- 39 | 10. Unlawful throwing, placing, or discharging of a
- 40 | destructive device or bomb;
- 41 | 11. Armed burglary in violation of s. 810.02(2)(b) or
- 42 | specified burglary of a dwelling or structure in violation of s.
- 43 | 810.02(2)(c), or burglary with an assault or battery in
- 44 | violation of s. 810.02(2)(a);
- 45 | 12. Aggravated battery;
- 46 | 13. Any lewd or lascivious offense committed upon or in
- 47 | the presence of a person less than 16 years of age;
- 48 | 14. Carrying, displaying, using, threatening, or
- 49 | attempting to use a weapon or firearm during the commission of a
- 50 | felony;
- 51 | 15. Grand theft in violation of s. 812.014(2)(a);
- 52 | 16. Possessing or discharging any weapon or firearm on
- 53 | school property in violation of s. 790.115;
- 54 | 17. Home invasion robbery;
- 55 | 18. Carjacking; or
- 56 | 19. Grand theft of a motor vehicle in violation of s.

HB 655

2011

57 812.014(2)(c)6. or grand theft of a motor vehicle valued at
58 \$20,000 or more in violation of s. 812.014(2)(b) if the child
59 has a previous adjudication for grand theft of a motor vehicle
60 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

61 (b) With respect to any child who was 16 or 17 years of
62 age at the time the alleged offense was committed, the state
63 attorney may file an information when in the state attorney's
64 judgment and discretion the public interest requires that adult
65 sanctions be considered or imposed. However, the state attorney
66 may not file an information on a child charged with a
67 misdemeanor, unless the child has had at least two previous
68 adjudications or adjudications withheld for delinquent acts, one
69 of which involved an offense classified as a felony under state
70 law.

71 (c) The state may not file an information on a child
72 otherwise eligible under paragraph (a) or paragraph (b) if it is
73 the child's first offense unless there are compelling reasons,
74 which the state shall set out in writing.

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

76 (a) When a child is eligible to have an information filed
77 by the state attorney under subsection (1), the state attorney
78 shall use the following criteria to determine whether to file an
79 information:

80 1. The seriousness of the alleged offense and whether
81 transferring the child is necessary for protection of the
82 community, including:

83 a. The recommendation of the department, through review
84 and consideration of the recommendations of the department's

85 caseworker.

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

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

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

93 c. The sophistication and maturity of the child.

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

96 a. Previous contacts with the department, the Department
 97 of Corrections, the former Department of Health and
 98 Rehabilitative Services, the Department of Children and Family
 99 Services, other law enforcement agencies, and courts.

100 b. Prior periods of probation.

101 c. Prior adjudications that the child committed a
 102 delinquent act or violation of law, with greater weight being
 103 given if the child has previously been found by a court to have
 104 committed a delinquent act or violation of law involving
 105 violence to persons.

106 d. Prior commitments to institutions of the department,
 107 the Department of Corrections, or agencies under contract with
 108 either department.

109 e. Patterns of criminality or patterns of escalation.

110 3. The prospects for adequate protection of the public and
 111 the likelihood of reasonable rehabilitation of the child, if the
 112 child is found to have committed the alleged offense, by the use

HB 655

2011

113 of procedures, services, and facilities currently available to
114 the juvenile court.

115 4. Cost-effective alternatives available to divert the
116 child from the criminal and juvenile justice systems and offer
117 rehabilitative services for the child.

118 (b) If the state attorney files an information against a
119 child under this section, the state attorney shall file with the
120 court his or her written explanation, addressing the factors
121 listed in paragraph (a), as to why the child should be
122 transferred for criminal prosecution. ~~Each state attorney shall~~
123 ~~develop written policies and guidelines to govern determinations~~
124 ~~for filing an information on a juvenile, to be submitted to the~~
125 ~~Executive Office of the Governor, the President of the Senate,~~
126 ~~and the Speaker of the House of Representatives not later than~~
127 ~~January 1 of each year.~~

128 (5) REVERSE WAIVER.—Any child over whom the adult court
129 has obtained original jurisdiction may request, in writing, a
130 hearing to determine whether the child shall remain in adult
131 court. The adult court shall retain jurisdiction unless the
132 child proves by a preponderance of evidence all of the
133 following:

134 (a) The child could obtain services available in the
135 juvenile justice system which could lessen the possibility of
136 the child reoffending in the future.

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

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

HB 655

2011

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

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

145 (6)-(5) CHARGES INCLUDED.—An information filed pursuant to
146 this section may include all charges that are based on the same
147 act, criminal episode, or transaction as the primary offenses.

148 Section 2. This act shall take effect July 1, 2011.