

By Senator Smith

29-00407-12

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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 discretionary direct filing of  
5           charges against certain juveniles; providing criteria  
6           for determining when a case against a juvenile should  
7           be recommended to the court to be transferred for  
8           criminal prosecution; providing criteria for  
9           consideration of a child's request to an adult court  
10          to return a criminal case to the juvenile justice  
11          system; reenacting s. 985.556(3), F.S., relating to  
12          involuntary mandatory waiver of juvenile court  
13          jurisdiction, to incorporate the amendments made to s.  
14          985.557, F.S., in a 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. Paragraph (c) is added to subsection (1) of  
20           section 985.557, Florida Statutes, subsection (4) of that  
21           section is amended, and subsection (5) is added to that section,  
22           to read:

23           985.557 Direct filing of an information; discretionary and  
24           mandatory criteria.—

25           (1) DISCRETIONARY DIRECT FILE.—

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

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30 (4) DIRECT-FILE CRITERIA.—

31 (a) When a child is eligible to have an information filed  
32 by the state attorney under subsection (1), the state attorney  
33 shall use the following criteria to determine whether to file an  
34 information:

35 1. The seriousness of the alleged offense and whether  
36 transferring the child is necessary for protection of the  
37 community, including:

38 a. The recommendation of the department, through review and  
39 consideration of the recommendations of the department's  
40 caseworker.

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

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

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

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

49 c. The sophistication and maturity of the child.

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

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

55 b. Prior periods of probation.

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

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59 committed a delinquent act or violation of law involving  
60 violence to persons.

61 d. Prior commitments to institutions of the department, the  
62 Department of Corrections, or agencies under contract with  
63 either department.

64 e. Patterns of criminality or patterns of escalation.

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

70 4. Cost-effective alternatives available to divert the  
71 child from the criminal and juvenile justice systems and offer  
72 rehabilitative services for the child.

73 (b) If the state attorney files an information against a  
74 child under this section, the state attorney shall file with the  
75 court his or her written explanation, addressing the factors  
76 listed in paragraph (a), as to why the child should be  
77 transferred for criminal prosecution. ~~An information filed~~  
78 ~~pursuant to this section may include all charges that are based~~  
79 ~~on the same act, criminal episode, or transaction as the primary~~  
80 ~~offenses.~~

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

87 (a) The child could obtain services available in the

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88 juvenile justice system which could lessen the possibility of  
89 the child reoffending in the future.

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

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

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

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

98 Section 2. For the purpose of incorporating the amendment  
99 made by this act to section 985.557, Florida Statutes, in a  
100 reference thereto, subsection (3) of section 985.556, Florida  
101 Statutes, is reenacted to read:

102 985.556 Waiver of juvenile court jurisdiction; hearing.—

103 (3) INVOLUNTARY MANDATORY WAIVER.—

104 (a) If the child was 14 years of age or older, and if the  
105 child has been previously adjudicated delinquent for an act  
106 classified as a felony, which adjudication was for the  
107 commission of, attempt to commit, or conspiracy to commit  
108 murder, sexual battery, armed or strong-armed robbery,  
109 carjacking, home-invasion robbery, aggravated battery,  
110 aggravated assault, or burglary with an assault or battery, and  
111 the child is currently charged with a second or subsequent  
112 violent crime against a person; or

113 (b) If the child was 14 years of age or older at the time  
114 of commission of a fourth or subsequent alleged felony offense  
115 and the child was previously adjudicated delinquent or had  
116 adjudication withheld for or was found to have committed, or to

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117 have attempted or conspired to commit, three offenses that are  
118 felony offenses if committed by an adult, and one or more of  
119 such felony offenses involved the use or possession of a firearm  
120 or violence against a person;

121  
122 the state attorney shall request the court to transfer and  
123 certify the child for prosecution as an adult or shall provide  
124 written reasons to the court for not making such request, or  
125 proceed under s. 985.557(1). Upon the state attorney's request,  
126 the court shall either enter an order transferring the case and  
127 certifying the case for trial as if the child were an adult or  
128 provide written reasons for not issuing such an order.

129 Section 3. This act shall take effect July 1, 2012.