

By Senator Soto

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1 A bill to be entitled
2 An act relating to prosecution of juveniles; amending
3 s. 985.557, F.S.; revising the age-based criteria and
4 the offenses for which the discretionary direct file
5 of an information against a child may be made in adult
6 court; prohibiting the filing of an information on a
7 child otherwise eligible if it is the child's first
8 offense unless there are compelling reasons; requiring
9 such reasons to be stated in writing; providing
10 criteria for a state attorney to determine whether to
11 file an information; requiring a state attorney to
12 file a written explanation when an information is
13 filed; providing criteria for consideration of a
14 child's request to an adult court to return a criminal
15 case to the juvenile justice system; reenacting ss.
16 985.04(2), 985.15(1), 985.265(5), and 985.556(3),
17 F.S., relating to direct filing, to incorporate the
18 amendments made to s. 985.557, F.S., in references
19 thereto; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsection (1) of section 985.557, Florida
24 Statutes, is amended, present subsection (4) is renumbered as
25 subsection (6) and amended, and new subsections (4) and (5) are
26 added to that section, to read:

27 985.557 Direct filing of an information; discretionary and
28 mandatory criteria.—

29 (1) DISCRETIONARY DIRECT FILE.—

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30 (a) With respect to any child who was 14 ~~or 15~~ years of age
31 or older at the time the alleged offense was committed, the
32 state attorney may file an information when in the state
33 attorney's judgment and discretion the public interest requires
34 that adult sanctions be considered or imposed and when the
35 offense charged is for the commission of, attempt to commit, or
36 conspiracy to commit:

- 37 1. Arson;
- 38 2. Sexual battery;
- 39 3. Robbery;
- 40 4. Kidnapping;
- 41 5. Aggravated child abuse;
- 42 6. Aggravated assault;
- 43 7. Aggravated stalking;
- 44 8. Murder;
- 45 9. Manslaughter;
- 46 10. Unlawful throwing, placing, or discharging of a
47 destructive device or bomb;
- 48 11. Armed burglary in violation of s. 810.02(2)(b) or
49 specified burglary of a dwelling or structure in violation of s.
50 810.02(2)(c), or burglary with an assault or battery in
51 violation of s. 810.02(2)(a);
- 52 12. Aggravated battery;
- 53 13. Any lewd or lascivious offense committed upon or in the
54 presence of a person less than 16 years of age;
- 55 14. Carrying, displaying, using, threatening, or attempting
56 to use a weapon or firearm during the commission of a felony;
- 57 ~~15. Grand theft in violation of s. 812.014(2)(a);~~
- 58 15.16. Possessing or discharging any weapon or firearm on

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59 school property in violation of s. 790.115;
60 ~~16.17.~~ Home invasion robbery;
61 ~~17.18.~~ Carjacking; or
62 ~~18.19.~~ Grand theft of a motor vehicle in violation of s.
63 812.014(2)(c)6. or grand theft of a motor vehicle valued at
64 \$20,000 or more in violation of s. 812.014(2)(b) if the child
65 has a previous adjudication for grand theft of a motor vehicle
66 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

67 (b) The state may not file an information on a child
68 otherwise eligible under this subsection if it is the child's
69 first offense unless there are compelling reasons, which the
70 state shall set out in writing ~~With respect to any child who was~~
71 ~~16 or 17 years of age at the time the alleged offense was~~
72 ~~committed, the state attorney may file an information when in~~
73 ~~the state attorney's judgment and discretion the public interest~~
74 ~~requires that adult sanctions be considered or imposed. However,~~
75 ~~the state attorney may not file an information on a child~~
76 ~~charged with a misdemeanor, unless the child has had at least~~
77 ~~two previous adjudications or adjudications withheld for~~
78 ~~delinquent acts, one of which involved an offense classified as~~
79 ~~a felony under state law.~~

80 (4) DIRECT FILE CRITERIA.—

81 (a) When a child is eligible to have an information filed
82 by the state attorney under subsection (1), the state attorney
83 shall use the following criteria to determine whether to file an
84 information:

85 1. The seriousness of the alleged offense and whether
86 transferring the child is necessary for protection of the
87 community, including:

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88 a. The recommendation of the department, through review and
89 consideration of the recommendations of the department's
90 caseworker.

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

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

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

98 c. The sophistication and maturity of the child.

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

100 a. Previous contacts with the department, the Department of
101 Corrections, other law enforcement agencies, and the courts.

102 b. Prior periods of probation.

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

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

111 e. Patterns of criminality or patterns of escalation.

112 3. The prospects for adequate protection of the public and
113 the likelihood of reasonable rehabilitation of the child, if the
114 child is found to have committed the alleged offense, by the use
115 of procedures, services, and facilities currently available to
116 the juvenile court.

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

120 (b) If the state attorney files an information against a
121 child under this section, the state attorney shall file with the
122 court his or her written explanation, addressing the factors
123 listed in paragraph (a), as to why the child should be
124 transferred for criminal prosecution.

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

131 (a) The child could obtain services available in the
132 juvenile justice system which could lessen the possibility of
133 the child reoffending in the future.

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

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

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

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

142 (6) ~~(4)~~ CHARGES INCLUDED.—An information filed pursuant to
143 this section may include all charges that are based on the same
144 act, criminal episode, or transaction as the primary offenses.

145 Section 2. Subsection (2) of s. 985.04, subsection (1) of

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146 s. 985.15, subsection (5) of s. 985.265, and subsection (3) of
147 s. 985.556, Florida Statutes, are reenacted for the purpose of
148 incorporating the amendments made by this act to s. 985.557,
149 Florida Statutes.

150 Section 3. This act shall take effect July 1, 2015.