

1 A bill to be entitled

2 An act relating to criminal prosecution of juveniles;
3 amending s. 985.557, F.S.; authorizing additional
4 circumstances for the discretionary direct filing of
5 charges against certain juveniles; requiring the state
6 attorney to consider specified criteria in determining
7 whether to recommend to the court that a child be
8 transferred for criminal prosecution as an adult;
9 requiring the state attorney to file a written
10 explanation if he or she decides to file an
11 information against a child; authorizing a child to
12 request, in writing, a certain hearing; requiring the
13 court to retain jurisdiction of a child if the child
14 or his or her counsel does not meet a certain
15 evidentiary burden of proof; reenacting ss. 985.04(2),
16 985.15(1), and 985.556(3), F.S., relating to certain
17 records of a child, specified filing decisions of the
18 state attorney, and involuntary mandatory waivers of
19 juvenile court jurisdiction, respectively, to
20 incorporate the amendments made to s. 985.557, F.S.,
21 in references thereto; providing an effective date.

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

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25 Section 1. Paragraph (c) is added to subsection (1) of
26 section 985.557, Florida Statutes, subsection (4) of that

27 section is amended, and subsection (5) is added to that section,
 28 to read:

29 985.557 Direct filing of an information; discretionary and
 30 mandatory criteria.—

31 (1) DISCRETIONARY DIRECT FILE.—

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

36 (4) DIRECT-FILE CRITERIA.—

37 (a) The state attorney shall use the following criteria in
 38 determining whether to file an information against a child under
 39 subsection (1):

40 1. The seriousness of the alleged offense and whether
 41 transferring the child is necessary for the protection of the
 42 community. The state attorney may consider the following in his
 43 or her evaluation:

44 a. The recommendation of the department, through review
 45 and consideration of the recommendations of the department's
 46 caseworker.

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

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

51 (II) Whether the alleged offense was against persons or
 52 against property, with greater weight being given to offenses

53 against persons, especially when personal injury resulted.
54 (III) The strength of the state's evidence.
55 c. The sophistication and maturity of the child.
56 2. The record and previous history of the child,
57 including:
58 a. Previous contacts with the department, the Department
59 of Corrections, the former Department of Health and
60 Rehabilitative Services, the Department of Children and
61 Families, other law enforcement agencies, and the courts.
62 b. Prior periods of probation.
63 c. Prior adjudications that the child committed a
64 delinquent act or violation of law, with greater weight being
65 given if the child has previously been found by a court to have
66 committed a delinquent act or violation of law involving
67 violence to persons.
68 d. Prior commitments to institutions of the department,
69 the Department of Corrections, or agencies under contract with
70 the departments.
71 e. Patterns of criminality or patterns of escalation.
72 3. If the child is found to have committed the alleged
73 offense, the prospects for adequate protection of the public and
74 the likelihood of reasonable rehabilitation of the child through
75 the use of procedures, services, and facilities currently
76 available to the juvenile court.
77 4. Cost-effective alternatives available to divert the
78 child from the criminal and juvenile justice systems and offer

79 the child rehabilitative services.

80 (b) If the state attorney files an information against a
81 child under this section, the state attorney shall file with the
82 court his or her written explanation, addressing the criteria
83 specified in paragraph (a), as to why the child should be
84 transferred for criminal prosecution ~~An information filed~~
85 ~~pursuant to this section may include all charges that are based~~
86 ~~on the same act, criminal episode, or transaction as the primary~~
87 ~~offenses.~~

88 (5) REVERSE WAIVER.—Any child over whom the adult court
89 has obtained original jurisdiction may request, in writing, a
90 hearing to determine whether the child must remain in adult
91 court. The adult court shall retain jurisdiction unless the
92 child or his or her counsel proves by a preponderance of
93 evidence all of the following:

94 (a) The child could obtain services available in the
95 juvenile justice system which could lessen the possibility of
96 the child reoffending in the future.

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

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

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

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

105 Section 2. For the purpose of incorporating the amendment
 106 made by this act to section 985.557, Florida Statutes, in a
 107 reference thereto, subsection (2) of section 985.04, Florida
 108 Statutes, is reenacted to read:

109 985.04 Oaths; records; confidential information.—

110 (2) Notwithstanding any other provisions of this chapter,
 111 the name, photograph, address, and crime or arrest report of a
 112 child:

113 (a) Taken into custody if the child has been taken into
 114 custody by a law enforcement officer for a violation of law
 115 which, if committed by an adult, would be a felony;

116 (b) Found by a court to have committed three or more
 117 violations of law which, if committed by an adult, would be
 118 misdemeanors;

119 (c) Transferred to the adult system under s. 985.557,
 120 indicted under s. 985.56, or waived under s. 985.556;

121 (d) Taken into custody by a law enforcement officer for a
 122 violation of law subject to s. 985.557(2)(b) or (d); or

123 (e) Transferred to the adult system but sentenced to the
 124 juvenile system under s. 985.565

125
 126 shall not be considered confidential and exempt from s.
 127 119.07(1) solely because of the child's age.

128 Section 3. For the purpose of incorporating the amendment
 129 made by this act to section 985.557, Florida Statutes, in a
 130 reference thereto, subsection (1) of section 985.15, Florida

131 Statutes, is reenacted to read:

132 985.15 Filing decisions.—

133 (1) The state attorney may in all cases take action
 134 independent of the action or lack of action of the juvenile
 135 probation officer and shall determine the action that is in the
 136 best interest of the public and the child. If the child meets
 137 the criteria requiring prosecution as an adult under s. 985.556,
 138 the state attorney shall request the court to transfer and
 139 certify the child for prosecution as an adult or shall provide
 140 written reasons to the court for not making such a request. In
 141 all other cases, the state attorney may:

- 142 (a) File a petition for dependency;
- 143 (b) File a petition under chapter 984;
- 144 (c) File a petition for delinquency;
- 145 (d) File a petition for delinquency with a motion to
 146 transfer and certify the child for prosecution as an adult;
- 147 (e) File an information under s. 985.557;
- 148 (f) Refer the case to a grand jury;
- 149 (g) Refer the child to a diversionary, pretrial
 150 intervention, arbitration, or mediation program, or to some
 151 other treatment or care program if such program commitment is
 152 voluntarily accepted by the child or the child's parents or
 153 legal guardian; or
- 154 (h) Decline to file.

155 Section 4. For the purpose of incorporating the amendment
 156 made by this act to section 985.557, Florida Statutes, in a

157 reference thereto, subsection (3) of section 985.556, Florida
158 Statutes, is reenacted to read:

159 985.556 Waiver of juvenile court jurisdiction; hearing.—

160 (3) INVOLUNTARY MANDATORY WAIVER.—

161 (a) If the child was 14 years of age or older, and if the
162 child has been previously adjudicated delinquent for an act
163 classified as a felony, which adjudication was for the
164 commission of, attempt to commit, or conspiracy to commit
165 murder, sexual battery, armed or strong-armed robbery,
166 carjacking, home-invasion robbery, aggravated battery,
167 aggravated assault, or burglary with an assault or battery, and
168 the child is currently charged with a second or subsequent
169 violent crime against a person; or

170 (b) If the child was 14 years of age or older at the time
171 of commission of a fourth or subsequent alleged felony offense
172 and the child was previously adjudicated delinquent or had
173 adjudication withheld for or was found to have committed, or to
174 have attempted or conspired to commit, three offenses that are
175 felony offenses if committed by an adult, and one or more of
176 such felony offenses involved the use or possession of a firearm
177 or violence against a person;

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179 the state attorney shall request the court to transfer and
180 certify the child for prosecution as an adult or shall provide
181 written reasons to the court for not making such request, or
182 proceed under s. 985.557(1). Upon the state attorney's request,

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183 | the court shall either enter an order transferring the case and
184 | certifying the case for trial as if the child were an adult or
185 | provide written reasons for not issuing such an order.

186 | Section 5. This act shall take effect July 1, 2016.