

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.; 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.

22
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

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30 mandatory criteria.—

31 (1) DISCRETIONARY DIRECT FILE.—

32 (c) Except as provided in paragraph (b), the state attorney
33 may file an information against a child otherwise eligible under
34 this section if the child has a prior felony or misdemeanor
35 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 and
45 consideration of the recommendations of the department's
46 caseworker.

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

57 a. Previous contacts with the department, the Department of
58 Corrections, the former Department of Health and Rehabilitative

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59 Services, the Department of Children and Families, other law
60 enforcement agencies, and the courts.

61 b. Prior periods of probation.

62 c. Prior adjudications that the child committed a
63 delinquent act or violation of law, with greater weight being
64 given if the child has previously been found by a court to have
65 committed a delinquent act or violation of law involving
66 violence to persons.

67 d. Prior commitments to institutions of the department, the
68 Department of Corrections, or agencies under contract with the
69 departments.

70 e. Patterns of criminality or patterns of escalation.

71 3. If the child is found to have committed the alleged
72 offense, the prospects for adequate protection of the public and
73 the likelihood of reasonable rehabilitation of the child through
74 the use of procedures, services, and facilities currently
75 available to the juvenile court.

76 4. Cost-effective alternatives available to divert the
77 child from the criminal and juvenile justice systems and offer
78 the child rehabilitative services.

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

87 (5) REVERSE WAIVER.—Any child over whom the adult court has

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88 obtained original jurisdiction may request, in writing, a
89 hearing to determine whether the child must remain in adult
90 court. The adult court shall retain jurisdiction unless the
91 child or his or her counsel proves by a preponderance of
92 evidence all of the following:

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

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

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

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

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

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

108 985.04 Oaths; records; confidential information.—

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

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

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

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117 misdemeanors;

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

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

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

124

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

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

131 985.15 Filing decisions.—

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

141 (a) File a petition for dependency;

142 (b) File a petition under chapter 984;

143 (c) File a petition for delinquency;

144 (d) File a petition for delinquency with a motion to

145 transfer and certify the child for prosecution as an adult;

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146 (e) File an information under s. 985.557;

147 (f) Refer the case to a grand jury;

148 (g) Refer the child to a diversionary, pretrial
149 intervention, arbitration, or mediation program, or to some
150 other treatment or care program if such program commitment is
151 voluntarily accepted by the child or the child's parents or
152 legal guardian; or

153 (h) Decline to file.

154 Section 4. For the purpose of incorporating the amendment
155 made by this act to section 985.557, Florida Statutes, in a
156 reference thereto, subsection (3) of section 985.556, Florida
157 Statutes, is reenacted to read:

158 985.556 Waiver of juvenile court jurisdiction; hearing.—

159 (3) INVOLUNTARY MANDATORY WAIVER.—

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

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

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175 such felony offenses involved the use or possession of a firearm
176 or violence against a person;

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178 the state attorney shall request the court to transfer and
179 certify the child for prosecution as an adult or shall provide
180 written reasons to the court for not making such request, or
181 proceed under s. 985.557(1). Upon the state attorney's request,
182 the court shall either enter an order transferring the case and
183 certifying the case for trial as if the child were an adult or
184 provide written reasons for not issuing such an order.

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