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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/3R

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03/11/2016 10:12 AM

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Senator Diaz de la Portilla moved the following:

Senate Amendment (with title amendment)

Delete lines 66 - 387

and insert:

Section 2. Paragraphs (c), (d), and (e) are added to subsection (1) of section 985.557, Florida Statutes, present subsection (2) of that section is amended, present subsections (3) and (4) of that section are redesignated as subsections (2) and (3), respectively, and a new subsection (4) and subsection (5) are added to that section, to read:

985.557 Direct filing of an information; discretionary ~~and~~



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12 ~~mandatory~~ criteria.-

13 (1) DISCRETIONARY DIRECT FILE.-

14 (c) For each child who is transferred to adult court for
15 prosecution, the state attorney in charge of the case shall
16 report in writing the criteria used by the state attorney in
17 making the decision to transfer. For purposes of this report,
18 the state attorney in each judicial circuit shall work
19 cooperatively with the department to develop a uniform list of
20 criteria and a uniform reporting format to be used statewide. If
21 a criterion not included in the uniform list of criteria is used
22 by a state attorney, such criterion must be identified in the
23 report. The state attorney shall file the report with the court
24 and the department at the time of disposition.

25 (d) For each child who is transferred to adult court for
26 prosecution or who was eligible for such transfer but for whom a
27 petition was filed, the following information shall be submitted
28 by the state attorney in charge of the case to the department at
29 the time of disposition:

30 a. Whether one or more adult codefendants were involved in
31 the case.

32 b. Whether one or more child codefendants were involved in
33 the case and whether such codefendant was transferred to adult
34 court.

35 c. Whether sentencing is pursuant to a plea or trial.

36 d. Whether the child was represented by counsel.

37 (e) The department must work with the state attorneys to
38 create a report that identifies children who enter the juvenile
39 justice system and qualify for direct file based on age and the
40 crime charged.



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41 ~~(2) MANDATORY DIRECT FILE.~~

42 ~~(a) With respect to any child who was 16 or 17 years of age~~
43 ~~at the time the alleged offense was committed, the state~~
44 ~~attorney shall file an information if the child has been~~
45 ~~previously adjudicated delinquent for an act classified as a~~
46 ~~felony, which adjudication was for the commission of, attempt to~~
47 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~
48 ~~strong-armed robbery, carjacking, home-invasion robbery,~~
49 ~~aggravated battery, or aggravated assault, and the child is~~
50 ~~currently charged with a second or subsequent violent crime~~
51 ~~against a person.~~

52 ~~(b) With respect to any child 16 or 17 years of age at the~~
53 ~~time an offense classified as a forcible felony, as defined in~~
54 ~~s. 776.08, was committed, the state attorney shall file an~~
55 ~~information if the child has previously been adjudicated~~
56 ~~delinquent or had adjudication withheld for three acts~~
57 ~~classified as felonies each of which occurred at least 45 days~~
58 ~~apart from each other. This paragraph does not apply when the~~
59 ~~state attorney has good cause to believe that exceptional~~
60 ~~circumstances exist which preclude the just prosecution of the~~
61 ~~juvenile in adult court.~~

62 ~~(c) The state attorney must file an information if a child,~~
63 ~~regardless of the child's age at the time the alleged offense~~
64 ~~was committed, is alleged to have committed an act that would be~~
65 ~~a violation of law if the child were an adult, that involves~~
66 ~~stealing a motor vehicle, including, but not limited to, a~~
67 ~~violation of s. 812.133, relating to carjacking, or s.~~
68 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~
69 ~~while the child was in possession of the stolen motor vehicle~~



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70 ~~the child caused serious bodily injury to or the death of a~~
71 ~~person who was not involved in the underlying offense. For~~
72 ~~purposes of this section, the driver and all willing passengers~~
73 ~~in the stolen motor vehicle at the time such serious bodily~~
74 ~~injury or death is inflicted shall also be subject to mandatory~~
75 ~~transfer to adult court. "Stolen motor vehicle," for the~~
76 ~~purposes of this section, means a motor vehicle that has been~~
77 ~~the subject of any criminal wrongful taking. For purposes of~~
78 ~~this section, "willing passengers" means all willing passengers~~
79 ~~who have participated in the underlying offense.~~

80 ~~(d)1. With respect to any child who was 16 or 17 years of~~
81 ~~age at the time the alleged offense was committed, the state~~
82 ~~attorney shall file an information if the child has been charged~~
83 ~~with committing or attempting to commit an offense listed in s.~~
84 ~~775.087(2)(a)1.a.-q., and, during the commission of or attempt~~
85 ~~to commit the offense, the child:~~

86 ~~a. Actually possessed a firearm or destructive device, as~~
87 ~~those terms are defined in s. 790.001.~~

88 ~~b. Discharged a firearm or destructive device, as described~~
89 ~~in s. 775.087(2)(a)2.~~

90 ~~e. Discharged a firearm or destructive device, as described~~
91 ~~in s. 775.087(2)(a)3., and, as a result of the discharge, death~~
92 ~~or great bodily harm was inflicted upon any person.~~

93 ~~2. Upon transfer, any child who is:~~

94 ~~a. Charged under sub-subparagraph 1.a. and who has been~~
95 ~~previously adjudicated or had adjudication withheld for a~~
96 ~~forcible felony offense or any offense involving a firearm, or~~
97 ~~who has been previously placed in a residential commitment~~
98 ~~program, shall be subject to sentencing under s. 775.087(2)(a),~~



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99 ~~notwithstanding s. 985.565.~~

100 ~~b. Charged under sub-subparagraph 1.b. or sub-subparagraph~~
101 ~~1.c., shall be subject to sentencing under s. 775.087(2) (a),~~
102 ~~notwithstanding s. 985.565.~~

103 ~~3. Upon transfer, any child who is charged under this~~
104 ~~paragraph, but who does not meet the requirements specified in~~
105 ~~subparagraph 2., shall be sentenced under s. 985.565; however,~~
106 ~~if the court imposes a juvenile sanction, the court must commit~~
107 ~~the child to a high-risk or maximum-risk juvenile facility.~~

108 ~~4. This paragraph shall not apply if the state attorney has~~
109 ~~good cause to believe that exceptional circumstances exist that~~
110 ~~preclude the just prosecution of the child in adult court.~~

111 ~~5. The Department of Corrections shall make every~~
112 ~~reasonable effort to ensure that any child 16 or 17 years of age~~
113 ~~who is convicted and sentenced under this paragraph be~~
114 ~~completely separated such that there is no physical contact with~~
115 ~~adult offenders in the facility, to the extent that it is~~
116 ~~consistent with chapter 958.~~

117 (4) TRANSFER PROHIBITION.—Notwithstanding any other law:

118 (a) A child who is eligible for direct file and who has
119 previously been found to be incompetent but has not been
120 restored to competency by a court may not be transferred to
121 adult court for criminal prosecution unless a motion to
122 determine competency is immediately filed by the state.

123 (b) The court may transfer the child from the jail to the
124 juvenile detention center for any period while the competency
125 hearing is pending and subsequently if competency placement is
126 deemed necessary.

127 (5) DATA COLLECTION RELATING TO DIRECT FILE.—



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128 (a) The department shall collect data relating to children
129 who are transferred under this section and s. 985.556 and for
130 children who are eligible for transfer but are the subject of a
131 petition, regardless of the outcome of the case. The data to be
132 collected must include, but need not be limited to:

133 1. Age.
134 2. Race and ethnicity.
135 3. Gender.
136 4. Circuit and county of residence.
137 5. Circuit and county of offense.
138 6. Prior offenses regardless of adjudication.
139 7. Prior periods of probation.
140 8. Previous contacts with law enforcement agencies or the
141 court which result in a civil citation, arrest, or charges being
142 filed with the state.

143 9. Initial charges.
144 10. Charges at disposition.
145 11. Whether child codefendants were involved who were
146 transferred to adult court.

147 12. Whether the child was represented by counsel.
148 13. Risk assessment instrument score.
149 14. The child's medical, mental health, substance abuse, or
150 trauma history.

151 15. The child's history of mental impairment or disability-
152 related accommodations.

153 16. The child's history of abuse or neglect.
154 17. The child's history of foster care placements,
155 including the number of prior placements.

156 18. Whether the child has below-average intellectual



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157 functioning.

158 19. Whether the child has received mental health services
159 or treatment.

160 20. Whether the child has been the subject of a child-in-
161 need-of-services or families-in-need-of-services petition or a
162 dependency petition.

163 21. The case resolution and disposition data, including,
164 but not limited to, plea or trial; participation in a diversion
165 program; the imposition of adult or juvenile sanctions; the type
166 and duration of the sentence or disposition, including length of
167 stay in a commitment facility, type of commitment facility, and
168 disciplinary reports from the commitment facility; and length of
169 incarceration in jail or prison and disciplinary reports from
170 those facilities.

171 22. Whether the child was previously found incompetent to
172 proceed in juvenile court.

173 23. Whether the child was arrested for an offense that
174 occurred subsequent to the transfer or decision to file a
175 juvenile petition.

176 24. Information generated by the state attorney in each
177 judicial circuit under paragraphs (1)(c) and (d).

178 (b) For every case transferred to adult court between July
179 1, 2015, and June 30, 2016, the department shall work with the
180 Office of Program Policy Analysis and Government Accountability
181 to generate a report analyzing the existing data. The department
182 must provide this report to the Governor, the President of the
183 Senate, and the Speaker of the House of Representatives by
184 January 31, 2017.

185 (c) The department shall work with the Office of Program



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186 Policy Analysis and Government Accountability to generate data
187 collection instruments to provide annual reports analyzing the
188 data under paragraph (a) for each fiscal year. The department
189 shall provide these reports to the Governor, the President of
190 the Senate, and the Speaker of the House of Representatives no
191 later than January 31 of the following calendar year.

192 Section 3. Paragraphs (a) and (b) of subsection (4) of
193 section 985.565, Florida Statutes, are amended to read:

194 985.565 Sentencing powers; procedures; alternatives for
195 juveniles prosecuted as adults.—

196 (4) SENTENCING ALTERNATIVES.—

197 (a) *Adult sanctions*.—

198 1. Cases prosecuted on indictment.—If the child is found to
199 have committed the offense punishable by death or life
200 imprisonment, the child shall be sentenced as an adult. If the
201 juvenile is not found to have committed the indictable offense
202 but is found to have committed a lesser included offense or any
203 other offense for which he or she was indicted as a part of the
204 criminal episode, the court may sentence as follows:

205 a. As an adult;

206 b. Under chapter 958; or

207 c. As a juvenile under this section.

208 2. Other cases.—If a child who has been transferred for
209 criminal prosecution pursuant to information or waiver of
210 juvenile court jurisdiction is found to have committed a
211 violation of state law or a lesser included offense for which he
212 or she was charged as a part of the criminal episode, the court
213 may sentence as follows:

214 a. As an adult;



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215 b. Under chapter 958; or

216 c. As a juvenile under this section.

217 ~~3. Notwithstanding any other provision to the contrary, if~~
218 ~~the state attorney is required to file a motion to transfer and~~
219 ~~certify the juvenile for prosecution as an adult under s.~~
220 ~~985.556(3) and that motion is granted, or if the state attorney~~
221 ~~is required to file an information under s. 985.557(2)(a) or~~
222 ~~(b), the court must impose adult sanctions.~~

223 3.4. Any sentence imposing adult sanctions is presumed
224 appropriate, and the court is not required to set forth specific
225 findings or enumerate the criteria in this subsection as any
226 basis for its decision to impose adult sanctions.

227 ~~4.5.~~ When a child has been transferred for criminal
228 prosecution as an adult and has been found to have committed a
229 violation of state law, the disposition of the case may include
230 the enforcement of any restitution ordered in any juvenile
231 proceeding.

232 5. The Department of Corrections shall make every
233 reasonable effort to ensure that any child who is convicted and
234 sentenced to a term in a jail or a prison facility be completely
235 separated so that there is no physical contact with adult
236 offenders in the facility, to the extent that it is consistent
237 with chapter 958.

238 (b) *Juvenile sanctions.* ~~For juveniles transferred to adult~~
239 ~~court but who do not qualify for such transfer under s.~~
240 ~~985.556(3) or s. 985.557(2)(a) or (b),~~ The court may impose
241 juvenile sanctions under this paragraph for juveniles
242 transferred to adult court. If juvenile sentences are imposed,
243 the court shall, under this paragraph, adjudge the child to have



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244 committed a delinquent act. Adjudication of delinquency shall
245 not be deemed a conviction, nor shall it operate to impose any
246 of the civil disabilities ordinarily resulting from a
247 conviction. The court shall impose an adult sanction or a
248 juvenile sanction and may not sentence the child to a
249 combination of adult and juvenile punishments. An adult sanction
250 or a juvenile sanction may include enforcement of an order of
251 restitution or probation previously ordered in any juvenile
252 proceeding. However, if the court imposes a juvenile sanction
253 and the department determines that the sanction is unsuitable
254 for the child, the department shall return custody of the child
255 to the sentencing court for further proceedings, including the
256 imposition of adult sanctions. Upon adjudicating a child
257 delinquent under subsection (1), the court may:

258 1. Place the child in a probation program under the
259 supervision of the department for an indeterminate period of
260 time until the child reaches the age of 19 years or sooner if
261 discharged by order of the court.

262 2. Commit the child to the department for treatment in an
263 appropriate program for children for an indeterminate period of
264 time until the child is 21 or sooner if discharged by the
265 department. The department shall notify the court of its intent
266 to discharge no later than 14 days prior to discharge. Failure
267 of the court to timely respond to the department's notice shall
268 be considered approval for discharge.

269 3. Order disposition under ss. 985.435, 985.437, 985.439,
270 985.441, 985.45, and 985.455 as an alternative to youthful
271 offender or adult sentencing if the court determines not to
272 impose youthful offender or adult sanctions.



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It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 985.534.

Section 4. Subsection (54) of section 985.03, Florida Statutes, is amended to read:

985.03 Definitions.—As used in this chapter, the term:

(54) "Waiver hearing" means a hearing provided for under s. 985.556 ~~s. 985.556(4)~~.

Section 5. Subsection (2) of section 985.04, Florida Statutes, is amended to read:

985.04 Oaths; records; confidential information.—

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

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

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

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

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

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



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302 shall not be considered confidential and exempt from s.
303 119.07(1) solely because of the child's age.

304 Section 6. Subsection (1) of section 985.15, Florida
305 Statutes, is amended to read:

306 985.15 Filing decisions.—

307 (1) The state attorney may in all cases take action
308 independent of the action or lack of action of the juvenile
309 probation officer and shall determine the action that is in the
310 best interest of the public and the child. ~~If the child meets
311 the criteria requiring prosecution as an adult under s. 985.556,
312 the state attorney shall request the court to transfer and
313 certify the child for prosecution as an adult or shall provide
314 written reasons to the court for not making such a request. In
315 all other cases,~~ The state attorney may:

- 316 (a) File a petition for dependency;
- 317 (b) File a petition under chapter 984;
- 318 (c) File a petition for delinquency;
- 319 (d) File a petition for delinquency with a motion to
320 transfer and certify the child for prosecution as an adult;
- 321 (e) File an information under s. 985.557;
- 322 (f) Refer the case to a grand jury;
- 323 (g) Refer the child to a diversionary, pretrial
324 intervention, arbitration, or mediation program, or to some
325 other treatment or care program if such program commitment is
326 voluntarily accepted by the child or the child's parents or
327 legal guardian; or
- 328 (h) Decline to file.

329
330 ===== T I T L E A M E N D M E N T =====



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331 And the title is amended as follows:

332 Delete lines 7 - 21

333 and insert:

334 writing the criteria used in making the decision to
335 transfer; requiring state attorneys to work
336 cooperatively with the Department of Juvenile Justice
337 to develop a uniform list of criteria to be used
338 statewide in reporting decisions to transfer a child
339 to adult court for prosecution; providing requirements
340 for the report; requiring the state attorney to file
341 the report with the court and the department;
342 requiring the state attorney to submit specified
343 information to the department; requiring the
344 department to work with the state attorneys to create
345 a report containing specified information; deleting
346 provisions relating to the mandatory direct filing of
347 children to adult court; prohibiting the transfer to
348 adult court of a child found to be incompetent under
349 certain circumstances; providing an exception;
350 requiring the department to collect specified
351 information; requiring the department to work with the
352 Office of Program Policy Analysis and Government
353 Accountability to generate a report of specified
354 information; requiring the department to submit
355 reports to the Governor and the Legislature by
356 specified dates; amending s. 985.565, F.S.; requiring
357 the Department of Corrections to make every reasonable
358 effort to ensure that a child who is convicted and
359 sentenced to a term in jail or prison be completely



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360 separated from adult offenders; conforming provisions
361 to changes made by the act; amending ss. 985.03,
362 985.04, and 985.15, F.S.; conforming provisions to
363 changes