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LEGISLATIVE ACTION

Senate

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House

Floor: 1/AD/2R

03/10/2016 11:15 AM

Senator Diaz de la Portilla moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (2) and (3) of section 985.556,
Florida Statutes, are amended, and present subsections (4) and
(5) of that section are redesignated as subsections (3) and (4),
respectively, to read:

985.556 Waiver of juvenile court jurisdiction; hearing.—

(2) INVOLUNTARY DISCRETIONARY WAIVER. ~~Except as provided in
subsection (3),~~ The state attorney may file a motion requesting



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12 the court to transfer the child for criminal prosecution if the
13 child was 14 years of age or older at the time the alleged
14 delinquent act or violation of law was committed.

15 ~~(3) INVOLUNTARY MANDATORY WAIVER.—~~

16 ~~(a) If the child was 14 years of age or older, and if the~~
17 ~~child has been previously adjudicated delinquent for an act~~
18 ~~classified as a felony, which adjudication was for the~~
19 ~~commission of, attempt to commit, or conspiracy to commit~~
20 ~~murder, sexual battery, armed or strong-armed robbery,~~
21 ~~earjacking, home invasion robbery, aggravated battery,~~
22 ~~aggravated assault, or burglary with an assault or battery, and~~
23 ~~the child is currently charged with a second or subsequent~~
24 ~~violent crime against a person; or~~

25 ~~(b) If the child was 14 years of age or older at the time~~
26 ~~of commission of a fourth or subsequent alleged felony offense~~
27 ~~and the child was previously adjudicated delinquent or had~~
28 ~~adjudication withheld for or was found to have committed, or to~~
29 ~~have attempted or conspired to commit, three offenses that are~~
30 ~~felony offenses if committed by an adult, and one or more of~~
31 ~~such felony offenses involved the use or possession of a firearm~~
32 ~~or violence against a person;~~

33
34 ~~the state attorney shall request the court to transfer and~~
35 ~~certify the child for prosecution as an adult or shall provide~~
36 ~~written reasons to the court for not making such request, or~~
37 ~~proceed under s. 985.557(1). Upon the state attorney's request,~~
38 ~~the court shall either enter an order transferring the case and~~
39 ~~certifying the case for trial as if the child were an adult or~~
40 ~~provide written reasons for not issuing such an order.~~



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41 Section 2. Paragraph (c) is added to subsection (1) of
42 section 985.557, Florida Statutes, present subsection (2) of
43 that section is amended, present subsections (3) and (4) of that
44 section are redesignated as subsections (2) and (3),
45 respectively, and a new subsection (4) and subsection (5) are
46 added to that section, to read:

47 985.557 Direct filing of an information; discretionary ~~and~~
48 ~~mandatory~~ criteria.—

49 (1) DISCRETIONARY DIRECT FILE.—

50 (c)1. A decision under this section to transfer a child to
51 adult court for criminal prosecution, or a decision not to
52 transfer a child eligible for direct file, shall be documented
53 in writing by the state attorney in charge of the case and be
54 signed by the child's defense attorney or, if the child is not
55 represented by counsel, by the child's parent or guardian. The
56 document shall be filed with the court at the disposition of the
57 case. The state attorney shall include the following information
58 in the written decision:

59 a. Whether adult codefendants were involved in the case.

60 b. The length of time the child spent in jail awaiting
61 disposition.

62 c. Whether any discovery has been conducted on the case at
63 the time of transfer.

64 d. Whether the child waived the right to go to trial.

65 e. If the decision to transfer or not to transfer resulted
66 in a plea agreement, the details of the plea agreement,
67 including previous plea offers made by the state but not
68 accepted by the child, and any conditions placed on the plea
69 offer.



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70 f. Whether the prosecutor allowed the judge to sentence the
71 child to a disposition other than what the prosecutor was
72 offering in exchange for the child not being transferred to
73 adult court.

74 g. Whether the child had to waive statutory limits on
75 secure detention in order to avoid a direct file transfer, and,
76 if available, the amount of time the child who waived secure
77 detention limits actually spent in secure detention.

78 2. On or before the 15th of each month, the state attorney
79 in each judicial circuit shall collect the information specified
80 in subparagraph 1. for all cases disposed of the previous month
81 and submit that documentation to the department for data
82 collection.

83 ~~(2) MANDATORY DIRECT FILE.-~~

84 ~~(a) With respect to any child who was 16 or 17 years of age~~
85 ~~at the time the alleged offense was committed, the state~~
86 ~~attorney shall file an information if the child has been~~
87 ~~previously adjudicated delinquent for an act classified as a~~
88 ~~felony, which adjudication was for the commission of, attempt to~~
89 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~
90 ~~strong-armed robbery, carjacking, home-invasion robbery,~~
91 ~~aggravated battery, or aggravated assault, and the child is~~
92 ~~currently charged with a second or subsequent violent crime~~
93 ~~against a person.~~

94 ~~(b) With respect to any child 16 or 17 years of age at the~~
95 ~~time an offense classified as a forcible felony, as defined in~~
96 ~~s. 776.08, was committed, the state attorney shall file an~~
97 ~~information if the child has previously been adjudicated~~
98 ~~delinquent or had adjudication withheld for three acts~~



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99 ~~classified as felonies each of which occurred at least 45 days~~
100 ~~apart from each other. This paragraph does not apply when the~~
101 ~~state attorney has good cause to believe that exceptional~~
102 ~~circumstances exist which preclude the just prosecution of the~~
103 ~~juvenile in adult court.~~

104 ~~(c) The state attorney must file an information if a child,~~
105 ~~regardless of the child's age at the time the alleged offense~~
106 ~~was committed, is alleged to have committed an act that would be~~
107 ~~a violation of law if the child were an adult, that involves~~
108 ~~stealing a motor vehicle, including, but not limited to, a~~
109 ~~violation of s. 812.133, relating to carjacking, or s.~~
110 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~
111 ~~while the child was in possession of the stolen motor vehicle~~
112 ~~the child caused serious bodily injury to or the death of a~~
113 ~~person who was not involved in the underlying offense. For~~
114 ~~purposes of this section, the driver and all willing passengers~~
115 ~~in the stolen motor vehicle at the time such serious bodily~~
116 ~~injury or death is inflicted shall also be subject to mandatory~~
117 ~~transfer to adult court. "Stolen motor vehicle," for the~~
118 ~~purposes of this section, means a motor vehicle that has been~~
119 ~~the subject of any criminal wrongful taking. For purposes of~~
120 ~~this section, "willing passengers" means all willing passengers~~
121 ~~who have participated in the underlying offense.~~

122 ~~(d)1. With respect to any child who was 16 or 17 years of~~
123 ~~age at the time the alleged offense was committed, the state~~
124 ~~attorney shall file an information if the child has been charged~~
125 ~~with committing or attempting to commit an offense listed in s.~~
126 ~~775.087(2)(a)1.a.-q., and, during the commission of or attempt~~
127 ~~to commit the offense, the child:~~



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

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

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

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

136 ~~a. Charged under sub-subparagraph 1.a. and who has been~~
137 ~~previously adjudicated or had adjudication withheld for a~~
138 ~~forcible felony offense or any offense involving a firearm, or~~
139 ~~who has been previously placed in a residential commitment~~
140 ~~program, shall be subject to sentencing under s. 775.087(2)(a),~~
141 ~~notwithstanding s. 985.565.~~

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

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

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

153 ~~5. The Department of Corrections shall make every~~
154 ~~reasonable effort to ensure that any child 16 or 17 years of age~~
155 ~~who is convicted and sentenced under this paragraph be~~
156 ~~completely separated such that there is no physical contact with~~



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157 ~~adult offenders in the facility, to the extent that it is~~
158 ~~consistent with chapter 958.~~

159 (4) TRANSFER PROHIBITION.—Notwithstanding any other law, a
160 child who is eligible for direct file and who has previously
161 been found to be incompetent but has not been restored to
162 competency by a court may not be transferred to adult court for
163 criminal prosecution. A transferred child who is found to be
164 incompetent must be returned to the jurisdiction of the juvenile
165 court.

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

167 (a) Beginning January 1, 2017, the department shall collect
168 data relating to children who qualify for direct file under this
169 section and s. 985.556 regardless of the outcome of the case,
170 including, but not limited to:

171 1. Age.

172 2. Race and ethnicity.

173 3. Gender.

174 4. Circuit and county of residence.

175 5. Circuit and county of offense.

176 6. Prior adjudicated offenses.

177 7. Prior periods of probation.

178 8. Previous contacts with law enforcement agencies or the
179 court which result in a civil citation, arrest, or charges being
180 filed with the state.

181 9. Initial charges.

182 10. Charges at disposition.

183 11. Whether child codefendants were involved who were
184 transferred to adult court.

185 12. Whether the child was represented by counsel.



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- 186 13. Risk assessment instrument score.
- 187 14. The child's medical, mental health, substance abuse, or
188 trauma history.
- 189 15. The child's history of mental impairment or disability-
190 related accommodations.
- 191 16. The child's history of abuse or neglect.
- 192 17. The child's history of foster care placements,
193 including the number of prior placements.
- 194 18. Whether the child has below-average intellectual
195 functioning.
- 196 19. Whether the child has received mental health services
197 or treatment.
- 198 20. Whether the child has been the subject of a child-in-
199 need-of-services or families-in-need-of-services petition or a
200 dependency petition.
- 201 21. Whether the child was transferred for criminal
202 prosecution as an adult.
- 203 22. The case resolution in juvenile court.
- 204 23. The case resolution in adult court.
- 205 24. Whether the child was represented by counsel or whether
206 the child waived counsel.
- 207 25. Information generated by the office of the state
208 attorney in each judicial circuit under subparagraph (1)(c)1.
- 209 (b) Beginning January 1, 2017, for a child transferred for
210 criminal prosecution as an adult, the department shall also
211 collect:
- 212 1. Disposition data, including, but not limited to, whether
213 the child received adult sanctions, juvenile sanctions, or
214 diversion and, if sentenced to prison, the length of the prison



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215 sentence or the enhanced sentence; and

216 2. Whether the child was previously found incompetent to
217 proceed in juvenile court.

218 (c) For every juvenile case transferred between July 1,
219 2015, and June 30, 2016, the department shall work with the
220 Office of Program Policy Analysis and Government Accountability
221 to generate a report analyzing the aggregated data. The
222 department must provide this report to the Governor, the
223 President of the Senate, and the Speaker of the House of
224 Representatives by January 31, 2017.

225 (d) The department must work with the Office of Program
226 Policy Analysis and Government Accountability to generate a
227 report analyzing the aggregated data under paragraphs (a) and
228 (b) on an annual basis. The department must provide this report
229 to the Governor, the President of the Senate, and the Speaker of
230 the House of Representatives no later than January 31 of the
231 following calendar year.

232 Section 3. Subsection (54) of section 985.03, Florida
233 Statutes, is amended to read:

234 985.03 Definitions.—As used in this chapter, the term:

235 (54) "Waiver hearing" means a hearing provided for under s.
236 985.556 s. ~~985.556(4)~~.

237 Section 4. Subsection (2) of section 985.04, Florida
238 Statutes, is amended to read:

239 985.04 Oaths; records; confidential information.—

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

243 (a) Taken into custody if the child has been taken into



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244 custody by a law enforcement officer for a violation of law
245 which, if committed by an adult, would be a felony;

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

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

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

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

255
256 shall not be considered confidential and exempt from s.
257 119.07(1) solely because of the child's age.

258 Section 5. Subsection (1) of section 985.15, Florida
259 Statutes, is amended to read:

260 985.15 Filing decisions.—

261 (1) The state attorney may in all cases take action
262 independent of the action or lack of action of the juvenile
263 probation officer and shall determine the action that is in the
264 best interest of the public and the child. ~~If the child meets~~
265 ~~the criteria requiring prosecution as an adult under s. 985.556,~~
266 ~~the state attorney shall request the court to transfer and~~
267 ~~certify the child for prosecution as an adult or shall provide~~
268 ~~written reasons to the court for not making such a request. In~~
269 ~~all other cases,~~ The state attorney may:

270 (a) File a petition for dependency;

271 (b) File a petition under chapter 984;

272 (c) File a petition for delinquency;



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273 (d) File a petition for delinquency with a motion to
274 transfer and certify the child for prosecution as an adult;

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

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

277 (g) Refer the child to a diversionary, pretrial
278 intervention, arbitration, or mediation program, or to some
279 other treatment or care program if such program commitment is
280 voluntarily accepted by the child or the child's parents or
281 legal guardian; or

282 (h) Decline to file.

283 Section 6. Paragraphs (a) and (b) of subsection (4) of
284 section 985.565, Florida Statutes, are amended to read:

285 985.565 Sentencing powers; procedures; alternatives for
286 juveniles prosecuted as adults.—

287 (4) SENTENCING ALTERNATIVES.—

288 (a) *Adult sanctions*.—

289 1. Cases prosecuted on indictment.—If the child is found to
290 have committed the offense punishable by death or life
291 imprisonment, the child shall be sentenced as an adult. If the
292 juvenile is not found to have committed the indictable offense
293 but is found to have committed a lesser included offense or any
294 other offense for which he or she was indicted as a part of the
295 criminal episode, the court may sentence as follows:

296 a. As an adult;

297 b. Under chapter 958; or

298 c. As a juvenile under this section.

299 2. Other cases.—If a child who has been transferred for
300 criminal prosecution pursuant to information or waiver of
301 juvenile court jurisdiction is found to have committed a



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302 violation of state law or a lesser included offense for which he
303 or she was charged as a part of the criminal episode, the court
304 may sentence as follows:

- 305 a. As an adult;
- 306 b. Under chapter 958; or
- 307 c. As a juvenile under this section.

308 ~~3. Notwithstanding any other provision to the contrary, if~~
309 ~~the state attorney is required to file a motion to transfer and~~
310 ~~certify the juvenile for prosecution as an adult under s.~~
311 ~~985.556(3) and that motion is granted, or if the state attorney~~
312 ~~is required to file an information under s. 985.557(2) (a) or~~
313 ~~(b), the court must impose adult sanctions.~~

314 3.4. Any sentence imposing adult sanctions is presumed
315 appropriate, and the court is not required to set forth specific
316 findings or enumerate the criteria in this subsection as any
317 basis for its decision to impose adult sanctions.

318 4.5. When a child has been transferred for criminal
319 prosecution as an adult and has been found to have committed a
320 violation of state law, the disposition of the case may include
321 the enforcement of any restitution ordered in any juvenile
322 proceeding.

323 (b) *Juvenile sanctions.* ~~For juveniles transferred to adult~~
324 ~~court but who do not qualify for such transfer under s.~~
325 ~~985.556(3) or s. 985.557(2) (a) or (b),~~ The court may impose
326 juvenile sanctions under this paragraph for juveniles
327 transferred to adult court. If juvenile sentences are imposed,
328 the court shall, under this paragraph, adjudge the child to have
329 committed a delinquent act. Adjudication of delinquency shall
330 not be deemed a conviction, nor shall it operate to impose any



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331 of the civil disabilities ordinarily resulting from a
332 conviction. The court shall impose an adult sanction or a
333 juvenile sanction and may not sentence the child to a
334 combination of adult and juvenile punishments. An adult sanction
335 or a juvenile sanction may include enforcement of an order of
336 restitution or probation previously ordered in any juvenile
337 proceeding. However, if the court imposes a juvenile sanction
338 and the department determines that the sanction is unsuitable
339 for the child, the department shall return custody of the child
340 to the sentencing court for further proceedings, including the
341 imposition of adult sanctions. Upon adjudicating a child
342 delinquent under subsection (1), the court may:

343 1. Place the child in a probation program under the
344 supervision of the department for an indeterminate period of
345 time until the child reaches the age of 19 years or sooner if
346 discharged by order of the court.

347 2. Commit the child to the department for treatment in an
348 appropriate program for children for an indeterminate period of
349 time until the child is 21 or sooner if discharged by the
350 department. The department shall notify the court of its intent
351 to discharge no later than 14 days prior to discharge. Failure
352 of the court to timely respond to the department's notice shall
353 be considered approval for discharge.

354 3. Order disposition under ss. 985.435, 985.437, 985.439,
355 985.441, 985.45, and 985.455 as an alternative to youthful
356 offender or adult sentencing if the court determines not to
357 impose youthful offender or adult sanctions.

358

359 It is the intent of the Legislature that the criteria and



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360 guidelines in this subsection are mandatory and that a
361 determination of disposition under this subsection is subject to
362 the right of the child to appellate review under s. 985.534.

363 Section 7. For the purpose of incorporating the amendment
364 made by this act to sections 985.556 and 985.557, Florida
365 Statutes, in a reference thereto, paragraph (a) of subsection
366 (5) of section 985.265, Florida Statutes, is reenacted to read:

367 985.265 Detention transfer and release; education; adult
368 jails.—

369 (5) The court shall order the delivery of a child to a jail
370 or other facility intended or used for the detention of adults:

371 (a) When the child has been transferred or indicted for
372 criminal prosecution as an adult under part X, except that the
373 court may not order or allow a child alleged to have committed a
374 misdemeanor who is being transferred for criminal prosecution
375 pursuant to either s. 985.556 or s. 985.557 to be detained or
376 held in a jail or other facility intended or used for the
377 detention of adults; however, such child may be held temporarily
378 in a detention facility; or

379 (b) When a child taken into custody in this state is wanted
380 by another jurisdiction for prosecution as an adult.

381

382 The child shall be housed separately from adult inmates to
383 prohibit a child from having regular contact with incarcerated
384 adults, including trustees. "Regular contact" means sight and
385 sound contact. Separation of children from adults shall permit
386 no more than haphazard or accidental contact. The receiving jail
387 or other facility shall contain a separate section for children
388 and shall have an adequate staff to supervise and monitor the



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389 child's activities at all times. Supervision and monitoring of
390 children includes physical observation and documented checks by
391 jail or receiving facility supervisory personnel at intervals
392 not to exceed 10 minutes. This subsection does not prohibit
393 placing two or more children in the same cell. Under no
394 circumstances shall a child be placed in the same cell with an
395 adult.

396 Section 8. This act shall take effect July 1, 2016.

397

398 ===== T I T L E A M E N D M E N T =====

399 And the title is amended as follows:

400 Delete everything before the enacting clause
401 and insert:

402 A bill to be entitled
403 An act relating to direct filing of juveniles;
404 amending s. 985.556, F.S.; deleting provisions
405 relating to the involuntary mandatory waiver of
406 children by a state attorney; amending s. 985.557,
407 F.S.; requiring a state attorney to document in
408 writing specified information; requiring the state
409 attorney to submit specified collected information to
410 the Department of Juvenile Justice; deleting
411 provisions relating to the mandatory direct filing of
412 children to adult court; prohibiting the transfer to
413 adult court of a child found to be incompetent under
414 certain circumstances; requiring the department to
415 collect specified information beginning on a certain
416 date; requiring the department to work with the Office
417 of Program Policy Analysis and Government



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418 Accountability to generate a report of specified
419 information; requiring the department to submit
420 reports to the Governor and the Legislature by
421 specified dates; amending ss. 985.03, 985.04, 985.15,
422 and 985.565, F.S.; conforming provisions to changes
423 made by the act; reenacting s. 985.265(5), F.S.,
424 relating to juvenile detention transfer and release
425 and education, and adult jails, to incorporate the
426 amendments made to ss. 985.556 and 985.557, F.S., in a
427 reference thereto; providing an effective date.