

By Senator Bracy

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1 A bill to be entitled
2 An act relating to juvenile justice; amending s.
3 985.556, F.S.; increasing the age of a child at which
4 a state attorney may, or is required to, request a
5 court to transfer the child to adult court for
6 criminal prosecution; amending s. 985.557, F.S.;
7 increasing the age of a child at which a state
8 attorney may, or is required to, file an information
9 against the child for prosecution as an adult; making
10 a technical change; reenacting s. 985.15(1), F.S.,
11 relating to filing decisions, to incorporate the
12 amendment made to s. 985.556, F.S., in a reference
13 thereto; reenacting ss. 985.265(5) and 985.565(4),
14 F.S., relating to children in adult jails and
15 sentencing alternatives for juveniles prosecuted as
16 adults, respectively, to incorporate the amendments
17 made to ss. 985.556 and 985.557, F.S., in references
18 thereto; reenacting s. 985.26(2)(c), F.S., relating to
19 the length of detention, to incorporate the amendment
20 made to s. 985.557, F.S., in a reference thereto;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsections (2) and (3) of section 985.556,
26 Florida Statutes, are amended to read:

27 985.556 Waiver of juvenile court jurisdiction; hearing.—

28 (2) INVOLUNTARY DISCRETIONARY WAIVER.—Except as provided in
29 subsection (3), the state attorney may file a motion requesting

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30 the court to transfer the child for criminal prosecution if the
31 child was 15 ~~14~~ years of age or older at the time the alleged
32 delinquent act or violation of law was committed.

33 (3) INVOLUNTARY MANDATORY WAIVER.—

34 (a) If the child was 15 ~~14~~ years of age or older, and if
35 the child has been previously adjudicated delinquent for an act
36 classified as a felony, which adjudication was for the
37 commission of, attempt to commit, or conspiracy to commit
38 murder, sexual battery, armed or strong-armed robbery,
39 carjacking, home-invasion robbery, aggravated battery,
40 aggravated assault, or burglary with an assault or battery, and
41 the child is currently charged with a second or subsequent
42 violent crime against a person; or

43 (b) If the child was 15 ~~14~~ years of age or older at the
44 time of commission of a fourth or subsequent alleged felony
45 offense and the child was previously adjudicated delinquent or
46 had adjudication withheld for or was found to have committed, or
47 to have attempted or conspired to commit, three offenses that
48 are felony offenses if committed by an adult, and one or more of
49 such felony offenses involved the use or possession of a firearm
50 or violence against a person;

51
52 the state attorney shall request the court to transfer and
53 certify the child for prosecution as an adult or shall provide
54 written reasons to the court for not making such request, or
55 proceed under s. 985.557(1). Upon the state attorney's request,
56 the court shall either enter an order transferring the case and
57 certifying the case for trial as if the child were an adult or
58 provide written reasons for not issuing such an order.

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59 Section 2. Subsection (1) and paragraphs (a), (b), and (d)
60 of subsection (2) of section 985.557, Florida Statutes, are
61 amended to read:

62 985.557 Direct filing of an information; discretionary and
63 mandatory criteria.—

64 (1) DISCRETIONARY DIRECT FILE.—

65 (a) With respect to any child who was ~~14 or~~ 15 or 16 years
66 of age at the time the alleged offense was committed, the state
67 attorney may file an information when in the state attorney's
68 judgment and discretion the public interest requires that adult
69 sanctions be considered or imposed and when the offense charged
70 is for the commission of, attempt to commit, or conspiracy to
71 commit:

- 72 1. Arson;
- 73 2. Sexual battery;
- 74 3. Robbery;
- 75 4. Kidnapping;
- 76 5. Aggravated child abuse;
- 77 6. Aggravated assault;
- 78 7. Aggravated stalking;
- 79 8. Murder;
- 80 9. Manslaughter;
- 81 10. Unlawful throwing, placing, or discharging of a
82 destructive device or bomb;
- 83 11. Armed burglary in violation of s. 810.02(2)(b) or
84 specified burglary of a dwelling or structure in violation of s.
85 810.02(2)(c), or burglary with an assault or battery in
86 violation of s. 810.02(2)(a);
- 87 12. Aggravated battery;

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88 13. Any lewd or lascivious offense committed upon or in the
89 presence of a person less than 16 years of age;

90 14. Carrying, displaying, using, threatening, or attempting
91 to use a weapon or firearm during the commission of a felony;

92 15. Grand theft in violation of s. 812.014(2)(a);

93 16. Possessing or discharging any weapon or firearm on
94 school property in violation of s. 790.115;

95 17. Home invasion robbery;

96 18. Carjacking; or

97 19. Grand theft of a motor vehicle in violation of s.
98 812.014(2)(c)6. or grand theft of a motor vehicle valued at
99 \$20,000 or more in violation of s. 812.014(2)(b) if the child
100 has a previous adjudication for grand theft of a motor vehicle
101 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

102 (b) With respect to any child who was ~~16~~ or 17 years of age
103 at the time the alleged offense was committed, the state
104 attorney may file an information when in the state attorney's
105 judgment and discretion the public interest requires that adult
106 sanctions be considered or imposed. However, the state attorney
107 may not file an information on a child charged with a
108 misdemeanor, unless the child has had at least two previous
109 adjudications or adjudications withheld for delinquent acts, one
110 of which involved an offense classified as a felony under state
111 law.

112 (2) MANDATORY DIRECT FILE.—

113 (a) With respect to any child who was ~~16~~ or 17 years of age
114 at the time the alleged offense was committed, the state
115 attorney shall file an information if the child has been
116 previously adjudicated delinquent for an act classified as a

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117 felony, which adjudication was for the commission of, attempt to
118 commit, or conspiracy to commit murder, sexual battery, armed or
119 strong-armed robbery, carjacking, home-invasion robbery,
120 aggravated battery, or aggravated assault, and the child is
121 currently charged with a second or subsequent violent crime
122 against a person.

123 (b) With respect to any child ~~16~~ or 17 years of age at the
124 time an offense classified as a forcible felony, as defined in
125 s. 776.08, was committed, the state attorney shall file an
126 information if the child has previously been adjudicated
127 delinquent or had adjudication withheld for three acts
128 classified as felonies each of which occurred at least 45 days
129 apart from each other. This paragraph does not apply when the
130 state attorney has good cause to believe that exceptional
131 circumstances exist which preclude the just prosecution of the
132 juvenile in adult court.

133 (d)1. With respect to any child who was ~~16~~ or 17 years of
134 age at the time the alleged offense was committed, the state
135 attorney shall file an information if the child has been charged
136 with committing or attempting to commit an offense listed in s.
137 775.087(2)(a)1.a.-p., and, during the commission of or attempt
138 to commit the offense, the child:

139 a. Actually possessed a firearm or destructive device, as
140 those terms are defined in s. 790.001.

141 b. Discharged a firearm or destructive device, as described
142 in s. 775.087(2)(a)2.

143 c. Discharged a firearm or destructive device, as described
144 in s. 775.087(2)(a)3., and, as a result of the discharge, death
145 or great bodily harm was inflicted upon any person.

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146 2. Upon transfer, any child who is:

147 a. Charged under sub-subparagraph 1.a. and who has been

148 previously adjudicated or had adjudication withheld for a

149 forcible felony offense or any offense involving a firearm, or

150 who has been previously placed in a residential commitment

151 program, shall be subject to sentencing under s. 775.087(2)(a),

152 notwithstanding s. 985.565.

153 b. Charged under sub-subparagraph 1.b. or sub-subparagraph

154 1.c., shall be subject to sentencing under s. 775.087(2)(a),

155 notwithstanding s. 985.565.

156 3. Upon transfer, any child who is charged under this

157 paragraph, but who does not meet the requirements specified in

158 subparagraph 2., shall be sentenced under s. 985.565; however,

159 if the court imposes a juvenile sanction, the court must commit

160 the child to a high-risk or maximum-risk juvenile facility.

161 4. This paragraph shall not apply if the state attorney has

162 good cause to believe that exceptional circumstances exist that

163 preclude the just prosecution of the child in adult court.

164 5. The Department of Corrections shall make every

165 reasonable effort to ensure that any child ~~16 or 17 years of age~~

166 who is convicted and sentenced under this paragraph be

167 completely separated such that there is no physical contact with

168 adult offenders in the facility, to the extent that it is

169 consistent with chapter 958.

170 Section 3. For the purpose of incorporating the amendment

171 made by this act to section 985.556, Florida Statutes, in a

172 reference thereto, subsection (1) of section 985.15, Florida

173 Statutes, is reenacted to read:

174 985.15 Filing decisions.—

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175 (1) The state attorney may in all cases take action
176 independent of the action or lack of action of the juvenile
177 probation officer and shall determine the action that is in the
178 best interest of the public and the child. If the child meets
179 the criteria requiring prosecution as an adult under s. 985.556,
180 the state attorney shall request the court to transfer and
181 certify the child for prosecution as an adult or shall provide
182 written reasons to the court for not making such a request. In
183 all other cases, the state attorney may:

- 184 (a) File a petition for dependency;
185 (b) File a petition under chapter 984;
186 (c) File a petition for delinquency;
187 (d) File a petition for delinquency with a motion to
188 transfer and certify the child for prosecution as an adult;
189 (e) File an information under s. 985.557;
190 (f) Refer the case to a grand jury;
191 (g) Refer the child to a diversionary, pretrial
192 intervention, arbitration, or mediation program, or to some
193 other treatment or care program if such program commitment is
194 voluntarily accepted by the child or the child's parents or
195 legal guardian; or
196 (h) Decline to file.

197 Section 4. For the purpose of incorporating the amendments
198 made by this act to sections 985.556 and 985.557, Florida
199 Statutes, in references thereto, subsection (5) of section
200 985.265, Florida Statutes, is reenacted to read:

201 985.265 Detention transfer and release; education; adult
202 jails.-

203 (5) The court shall order the delivery of a child to a jail

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204 or other facility intended or used for the detention of adults:

205 (a) When the child has been transferred or indicted for
206 criminal prosecution as an adult under part X, except that the
207 court may not order or allow a child alleged to have committed a
208 misdemeanor who is being transferred for criminal prosecution
209 pursuant to either s. 985.556 or s. 985.557 to be detained or
210 held in a jail or other facility intended or used for the
211 detention of adults; however, such child may be held temporarily
212 in a detention facility; or

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

215

216 The child shall be housed separately from adult inmates to
217 prohibit a child from having regular contact with incarcerated
218 adults, including trusties. "Regular contact" means sight and
219 sound contact. Separation of children from adults shall permit
220 no more than haphazard or accidental contact. The receiving jail
221 or other facility shall contain a separate section for children
222 and shall have an adequate staff to supervise and monitor the
223 child's activities at all times. Supervision and monitoring of
224 children includes physical observation and documented checks by
225 jail or receiving facility supervisory personnel at intervals
226 not to exceed 10 minutes. This subsection does not prohibit
227 placing two or more children in the same cell. Under no
228 circumstances shall a child be placed in the same cell with an
229 adult.

230 Section 5. For the purpose of incorporating the amendments
231 made by this act to sections 985.556 and 985.557, Florida
232 Statutes, in references thereto, subsection (4) of section

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233 985.565, Florida Statutes, is reenacted to read:

234 985.565 Sentencing powers; procedures; alternatives for
235 juveniles prosecuted as adults.—

236 (4) SENTENCING ALTERNATIVES.—

237 (a) *Adult sanctions*.—

238 1. Cases prosecuted on indictment.—If the child is found to
239 have committed the offense punishable by death or life
240 imprisonment, the child shall be sentenced as an adult. If the
241 juvenile is not found to have committed the indictable offense
242 but is found to have committed a lesser included offense or any
243 other offense for which he or she was indicted as a part of the
244 criminal episode, the court may sentence as follows:

245 a. As an adult;

246 b. Under chapter 958; or

247 c. As a juvenile under this section.

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

254 a. As an adult;

255 b. Under chapter 958; or

256 c. As a juvenile under this section.

257 3. Notwithstanding any other provision to the contrary, if
258 the state attorney is required to file a motion to transfer and
259 certify the juvenile for prosecution as an adult under s.

260 985.556(3) and that motion is granted, or if the state attorney
261 is required to file an information under s. 985.557(2) (a) or

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262 (b), the court must impose adult sanctions.

263 4. Any sentence imposing adult sanctions is presumed
264 appropriate, and the court is not required to set forth specific
265 findings or enumerate the criteria in this subsection as any
266 basis for its decision to impose adult sanctions.

267 5. When a child has been transferred for criminal
268 prosecution as an adult and has been found to have committed a
269 violation of state law, the disposition of the case may include
270 the enforcement of any restitution ordered in any juvenile
271 proceeding.

272 (b) *Juvenile sanctions*.—For juveniles transferred to adult
273 court but who do not qualify for such transfer under s.
274 985.556(3) or s. 985.557(2)(a) or (b), the court may impose
275 juvenile sanctions under this paragraph. If juvenile sentences
276 are imposed, the court shall, under this paragraph, adjudge the
277 child to have committed a delinquent act. Adjudication of
278 delinquency shall not be deemed a conviction, nor shall it
279 operate to impose any of the civil disabilities ordinarily
280 resulting from a conviction. The court shall impose an adult
281 sanction or a juvenile sanction and may not sentence the child
282 to a combination of adult and juvenile punishments. An adult
283 sanction or a juvenile sanction may include enforcement of an
284 order of restitution or probation previously ordered in any
285 juvenile proceeding. However, if the court imposes a juvenile
286 sanction and the department determines that the sanction is
287 unsuitable for the child, the department shall return custody of
288 the child to the sentencing court for further proceedings,
289 including the imposition of adult sanctions. Upon adjudicating a
290 child delinquent under subsection (1), the court may:

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291 1. Place the child in a probation program under the
292 supervision of the department for an indeterminate period of
293 time until the child reaches the age of 19 years or sooner if
294 discharged by order of the court.

295 2. Commit the child to the department for treatment in an
296 appropriate program for children for an indeterminate period of
297 time until the child is 21 or sooner if discharged by the
298 department. The department shall notify the court of its intent
299 to discharge no later than 14 days prior to discharge. Failure
300 of the court to timely respond to the department's notice shall
301 be considered approval for discharge.

302 3. Order disposition under ss. 985.435, 985.437, 985.439,
303 985.441, 985.45, and 985.455 as an alternative to youthful
304 offender or adult sentencing if the court determines not to
305 impose youthful offender or adult sanctions.

306 (c) *Adult sanctions upon failure of juvenile sanctions.*—If
307 a child proves not to be suitable to a commitment program,
308 juvenile probation program, or treatment program under paragraph
309 (b), the department shall provide the sentencing court with a
310 written report outlining the basis for its objections to the
311 juvenile sanction and shall simultaneously provide a copy of the
312 report to the state attorney and the defense counsel. The
313 department shall schedule a hearing within 30 days. Upon
314 hearing, the court may revoke the previous adjudication, impose
315 an adjudication of guilt, and impose any sentence which it may
316 lawfully impose, giving credit for all time spent by the child
317 in the department. The court may also classify the child as a
318 youthful offender under s. 958.04, if appropriate. For purposes
319 of this paragraph, a child may be found not suitable to a

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320 commitment program, community control program, or treatment
321 program under paragraph (b) if the child commits a new violation
322 of law while under juvenile sanctions, if the child commits any
323 other violation of the conditions of juvenile sanctions, or if
324 the child's actions are otherwise determined by the court to
325 demonstrate a failure of juvenile sanctions.

326 (d) *Further proceedings heard in adult court.*—When a child
327 is sentenced to juvenile sanctions, further proceedings
328 involving those sanctions shall continue to be heard in the
329 adult court.

330 (e) *School attendance.*—If the child is attending or is
331 eligible to attend public school and the court finds that the
332 victim or a sibling of the victim in the case is attending or
333 may attend the same school as the child, the court placement
334 order shall include a finding pursuant to the proceeding
335 described in s. 985.455(2), regardless of whether adjudication
336 is withheld.

337
338 It is the intent of the Legislature that the criteria and
339 guidelines in this subsection are mandatory and that a
340 determination of disposition under this subsection is subject to
341 the right of the child to appellate review under s. 985.534.

342 Section 6. For the purpose of incorporating the amendment
343 made by this act to section 985.557, Florida Statutes, in a
344 reference thereto, paragraph (c) of subsection (2) of section
345 985.26, Florida Statutes, is reenacted to read:

346 985.26 Length of detention.—

347 (2)

348 (c) A prolific juvenile offender under s. 985.255(1)(j)

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349 shall be placed on nonsecure detention care with electronic
350 monitoring or in secure detention care under a special detention
351 order until disposition. If secure detention care is ordered by
352 the court, it must be authorized under this part and may not
353 exceed:

354 1. Twenty-one days unless an adjudicatory hearing for the
355 case has been commenced in good faith by the court or the period
356 is extended by the court pursuant to paragraph (b); or

357 2. Fifteen days after the entry of an order of
358 adjudication.

359

360 As used in this paragraph, the term "disposition" means a
361 declination to file under s. 985.15(1)(h), the entry of nolle
362 prosequi for the charges, the filing of an indictment under s.
363 985.56 or an information under s. 985.557, a dismissal of the
364 case, or an order of final disposition by the court.

365 Section 7. This act shall take effect July 1, 2018.