

By Senator Wright

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20191260__

1 A bill to be entitled
2 An act relating to mandatory direct file; amending s.
3 985.557, F.S.; repealing provisions requiring the
4 mandatory direct filing of charges in adult court
5 against juveniles in certain circumstances; amending
6 s. 985.565, F.S.; conforming provisions to changes
7 made by the act; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Subsection (2) of section 985.557, Florida
12 Statutes, is amended to read:

13 985.557 Direct filing of an information; discretionary and
14 mandatory criteria.—

15 ~~(2) MANDATORY DIRECT FILE.—~~

16 ~~(a) With respect to any child who was 16 or 17 years of age~~
17 ~~at the time the alleged offense was committed, the state~~
18 ~~attorney shall file an information if the child has been~~
19 ~~previously adjudicated delinquent for an act classified as a~~
20 ~~felony, which adjudication was for the commission of, attempt to~~
21 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~
22 ~~strong-armed robbery, carjacking, home-invasion robbery,~~
23 ~~aggravated battery, or aggravated assault, and the child is~~
24 ~~currently charged with a second or subsequent violent crime~~
25 ~~against a person.~~

26 ~~(b) With respect to any child 16 or 17 years of age at the~~
27 ~~time an offense classified as a forcible felony, as defined in~~
28 ~~s. 776.08, was committed, the state attorney shall file an~~
29 ~~information if the child has previously been adjudicated~~

14-01690-19

20191260__

30 ~~delinquent or had adjudication withheld for three acts~~
31 ~~classified as felonies each of which occurred at least 45 days~~
32 ~~apart from each other. This paragraph does not apply when the~~
33 ~~state attorney has good cause to believe that exceptional~~
34 ~~circumstances exist which preclude the just prosecution of the~~
35 ~~juvenile in adult court.~~

36 ~~(c) The state attorney must file an information if a child,~~
37 ~~regardless of the child's age at the time the alleged offense~~
38 ~~was committed, is alleged to have committed an act that would be~~
39 ~~a violation of law if the child were an adult, that involves~~
40 ~~stealing a motor vehicle, including, but not limited to, a~~
41 ~~violation of s. 812.133, relating to carjacking, or s.~~
42 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~
43 ~~while the child was in possession of the stolen motor vehicle~~
44 ~~the child caused serious bodily injury to or the death of a~~
45 ~~person who was not involved in the underlying offense. For~~
46 ~~purposes of this section, the driver and all willing passengers~~
47 ~~in the stolen motor vehicle at the time such serious bodily~~
48 ~~injury or death is inflicted shall also be subject to mandatory~~
49 ~~transfer to adult court. "Stolen motor vehicle," for the~~
50 ~~purposes of this section, means a motor vehicle that has been~~
51 ~~the subject of any criminal wrongful taking. For purposes of~~
52 ~~this section, "willing passengers" means all willing passengers~~
53 ~~who have participated in the underlying offense.~~

54 ~~(d)1. With respect to any child who was 16 or 17 years of~~
55 ~~age at the time the alleged offense was committed, the state~~
56 ~~attorney shall file an information if the child has been charged~~
57 ~~with committing or attempting to commit an offense listed in s.~~
58 ~~775.087(2)(a)1.a. p., and, during the commission of or attempt~~

14-01690-19

20191260__

59 ~~to commit the offense, the child:~~

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

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

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

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

68 ~~a. Charged under sub-subparagraph 1.a. and who has been~~
69 ~~previously adjudicated or had adjudication withheld for a~~
70 ~~forcible felony offense or any offense involving a firearm, or~~
71 ~~who has been previously placed in a residential commitment~~
72 ~~program, shall be subject to sentencing under s. 775.087(2)(a),~~
73 ~~notwithstanding s. 985.565.~~

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

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

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

85 ~~5. The Department of Corrections shall make every~~
86 ~~reasonable effort to ensure that any child 16 or 17 years of age~~
87 ~~who is convicted and sentenced under this paragraph be~~

14-01690-19

20191260__

88 ~~completely separated such that there is no physical contact with~~
89 ~~adult offenders in the facility, to the extent that it is~~
90 ~~consistent with chapter 958.~~

91 Section 2. Paragraphs (a) and (b) of subsection (4) of
92 section 985.565, Florida Statutes, are amended to read:

93 985.565 Sentencing powers; procedures; alternatives for
94 juveniles prosecuted as adults.—

95 (4) SENTENCING ALTERNATIVES.—

96 (a) *Adult sanctions.*—

97 1. Cases prosecuted on indictment.—If the child is found to
98 have committed the offense punishable by death or life
99 imprisonment, the child shall be sentenced as an adult. If the
100 juvenile is not found to have committed the indictable offense
101 but is found to have committed a lesser included offense or any
102 other offense for which he or she was indicted as a part of the
103 criminal episode, the court may sentence as follows:

104 a. As an adult;

105 b. Under chapter 958; or

106 c. As a juvenile under this section.

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

113 a. As an adult;

114 b. Under chapter 958; or

115 c. As a juvenile under this section.

116 3. Notwithstanding any other provision to the contrary, if

14-01690-19

20191260__

117 the state attorney is required to file a motion to transfer and
118 certify the juvenile for prosecution as an adult under s.
119 985.556(3) and that motion is granted, ~~or if the state attorney~~
120 ~~is required to file an information under s. 985.557(2)(a) or~~
121 ~~(b)~~, the court must impose adult sanctions.

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

126 5. When a child has been transferred for criminal
127 prosecution as an adult and has been found to have committed a
128 violation of state law, the disposition of the case may include
129 the enforcement of any restitution ordered in any juvenile
130 proceeding.

131 (b) *Juvenile sanctions.*—For juveniles transferred to adult
132 court but who do not qualify for such transfer under s.
133 985.556(3) ~~or s. 985.557(2)(a) or (b)~~, the court may impose
134 juvenile sanctions under this paragraph. If juvenile sentences
135 are imposed, the court shall, under this paragraph, adjudge the
136 child to have committed a delinquent act. Adjudication of
137 delinquency shall not be deemed a conviction, nor shall it
138 operate to impose any of the civil disabilities ordinarily
139 resulting from a conviction. The court shall impose an adult
140 sanction or a juvenile sanction and may not sentence the child
141 to a combination of adult and juvenile punishments. An adult
142 sanction or a juvenile sanction may include enforcement of an
143 order of restitution or probation previously ordered in any
144 juvenile proceeding. However, if the court imposes a juvenile
145 sanction and the department determines that the sanction is

14-01690-19

20191260__

146 unsuitable for the child, the department shall return custody of
147 the child to the sentencing court for further proceedings,
148 including the imposition of adult sanctions. Upon adjudicating a
149 child delinquent under subsection (1), the court may:

150 1. Place the child in a probation program under the
151 supervision of the department for an indeterminate period of
152 time until the child reaches the age of 19 years or sooner if
153 discharged by order of the court.

154 2. Commit the child to the department for treatment in an
155 appropriate program for children for an indeterminate period of
156 time until the child is 21 or sooner if discharged by the
157 department. The department shall notify the court of its intent
158 to discharge no later than 14 days prior to discharge. Failure
159 of the court to timely respond to the department's notice shall
160 be considered approval for discharge.

161 3. Order disposition under ss. 985.435, 985.437, 985.439,
162 985.441, 985.45, and 985.455 as an alternative to youthful
163 offender or adult sentencing if the court determines not to
164 impose youthful offender or adult sanctions.

165
166 It is the intent of the Legislature that the criteria and
167 guidelines in this subsection are mandatory and that a
168 determination of disposition under this subsection is subject to
169 the right of the child to appellate review under s. 985.534.

170 Section 3. This act shall take effect July 1, 2019.