

1                   A bill to be entitled  
2           An act relating to prosecution of juvenile offenders;  
3           amending s. 985.556, F.S.; deleting provisions  
4           relating to involuntary mandatory waiver of juvenile  
5           court jurisdiction; amending s. 985.557, F.S.;  
6           revising provisions authorizing the discretionary  
7           prosecution of juveniles as adults in certain  
8           circumstances; deleting provisions requiring the  
9           prosecution of juveniles as adults in certain  
10          circumstances; amending s. 985.56, F.S.; specifying a  
11          minimum age for the indictment of a juvenile charged  
12          with an offense punishable by death or by life  
13          imprisonment; providing that a pending competency  
14          hearing prevents transfer of a juvenile to an adult  
15          court until the hearing is concluded and tolls  
16          specified time limits; requiring that a juvenile found  
17          to have committed the offense punishable by death or  
18          by life imprisonment must be sentenced as a juvenile,  
19          not as an adult; amending ss. 985.03 and 985.565,  
20          F.S.; conforming provisions to changes made by the  
21          act; 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~~  
 29 ~~in subsection (3),~~ The state attorney may file a motion  
 30 requesting the court to transfer the child for criminal  
 31 prosecution if the child was 14 years of age or older at the  
 32 time the alleged delinquent act or violation of law was  
 33 committed.

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

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

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

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

60 Section 2. Section 985.557, Florida Statutes, is amended  
 61 to read:

62 985.557 Prosecuting children as adults ~~Direct filing of an~~  
 63 ~~information; discretionary and mandatory criteria.-~~

64 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~  
 65 ~~FILE.-~~

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

- 73 1. ~~Arson;~~
- 74 2. ~~Sexual battery;~~
- 75 3. ~~Robbery;~~

- 76 | ~~4. Kidnapping;~~
- 77 | ~~5. Aggravated child abuse;~~
- 78 | ~~6. Aggravated assault;~~
- 79 | ~~7. Aggravated stalking;~~
- 80 | ~~8. Murder;~~
- 81 | ~~9. Manslaughter;~~
- 82 | ~~10. Unlawful throwing, placing, or discharging of a~~
- 83 | ~~destructive device or bomb;~~
- 84 | ~~11. Armed burglary in violation of s. 810.02(2)(b) or~~
- 85 | ~~specified burglary of a dwelling or structure in violation of s.~~
- 86 | ~~810.02(2)(c), or burglary with an assault or battery in~~
- 87 | ~~violation of s. 810.02(2)(a);~~
- 88 | ~~12. Aggravated battery;~~
- 89 | ~~13. Any lewd or lascivious offense committed upon or in~~
- 90 | ~~the presence of a person less than 16 years of age;~~
- 91 | ~~14. Carrying, displaying, using, threatening, or~~
- 92 | ~~attempting to use a weapon or firearm during the commission of a~~
- 93 | ~~felony;~~
- 94 | ~~15. Grand theft in violation of s. 812.014(2)(a);~~
- 95 | ~~16. Possessing or discharging any weapon or firearm on~~
- 96 | ~~school property in violation of s. 790.115;~~
- 97 | ~~17. Home invasion robbery;~~
- 98 | ~~18. Carjacking; or~~
- 99 | ~~19. Grand theft of a motor vehicle in violation of s.~~
- 100 | ~~812.014(2)(c)6. or grand theft of a motor vehicle valued at~~

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101 ~~§20,000 or more in violation of s. 812.014(2)(b) if the child~~  
102 ~~has a previous adjudication for grand theft of a motor vehicle~~  
103 ~~in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).~~

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

114 ~~(2) MANDATORY DIRECT FILE.—~~

115 ~~(a) With respect to any child who was 16 or 17 years of~~  
116 ~~age at the time the alleged offense was committed, the state~~  
117 ~~attorney shall file an information if the child has been~~  
118 ~~previously adjudicated delinquent for an act classified as a~~  
119 ~~felony, which adjudication was for the commission of, attempt to~~  
120 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~  
121 ~~strong-armed robbery, carjacking, home invasion robbery,~~  
122 ~~aggravated battery, or aggravated assault, and the child is~~  
123 ~~currently charged with a second or subsequent violent crime~~  
124 ~~against a person.~~

125 ~~(b) With respect to any child 16 or 17 years of age at the~~

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

135 ~~(c) The state attorney must file an information if a~~  
136 ~~child, regardless of the child's age at the time the alleged~~  
137 ~~offense was committed, is alleged to have committed an act that~~  
138 ~~would be a violation of law if the child were an adult, that~~  
139 ~~involves stealing a motor vehicle, including, but not limited~~  
140 ~~to, a violation of s. 812.133, relating to carjacking, or s.~~  
141 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~  
142 ~~while the child was in possession of the stolen motor vehicle~~  
143 ~~the child caused serious bodily injury to or the death of a~~  
144 ~~person who was not involved in the underlying offense. For~~  
145 ~~purposes of this section, the driver and all willing passengers~~  
146 ~~in the stolen motor vehicle at the time such serious bodily~~  
147 ~~injury or death is inflicted shall also be subject to mandatory~~  
148 ~~transfer to adult court. "Stolen motor vehicle," for the~~  
149 ~~purposes of this section, means a motor vehicle that has been~~  
150 ~~the subject of any criminal wrongful taking. For purposes of~~

151 ~~this section, "willing passengers" means all willing passengers~~  
152 ~~who have participated in the underlying offense.~~

153 ~~(d)1. With respect to any child who was 16 or 17 years of~~  
154 ~~age at the time the alleged offense was committed, the state~~  
155 ~~attorney shall file an information if the child has been charged~~  
156 ~~with committing or attempting to commit an offense listed in s.~~  
157 ~~775.087(2) (a)1.a. p., and, during the commission of or attempt~~  
158 ~~to commit the offense, the child:~~

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

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

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

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

168 ~~a. Charged under sub-subparagraph 1.a. and who has been~~  
169 ~~previously adjudicated or had adjudication withheld for a~~  
170 ~~forcible felony offense or any offense involving a firearm, or~~  
171 ~~who has been previously placed in a residential commitment~~  
172 ~~program, shall be subject to sentencing under s. 775.087(2) (a),~~  
173 ~~notwithstanding s. 985.565.~~

174 ~~b. Charged under sub-subparagraph 1.b. or sub-subparagraph~~  
175 ~~1.c., shall be subject to sentencing under s. 775.087(2) (a),~~

176 notwithstanding s. ~~985.565.~~

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

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

185 (b)5. The Department of Corrections shall make every  
186 reasonable effort to ensure that any child 16 or 17 years of age  
187 who is convicted and sentenced under this subsection ~~paragraph~~  
188 be completely separated such that there is no physical contact  
189 with adult offenders in the facility, to the extent that it is  
190 consistent with chapter 958.

191 (2) ~~(3)~~ EFFECT OF DIRECT FILE.—

192 (a) Once a child has been transferred for criminal  
193 prosecution pursuant to an information and has been found to  
194 have committed the presenting offense or a lesser included  
195 offense, the child shall be handled thereafter in every respect  
196 as if an adult for any subsequent violation of state law, unless  
197 the court imposes juvenile sanctions under s. 985.565.

198 (b) When a child is transferred for criminal prosecution  
199 as an adult, the court shall immediately transfer and certify to  
200 the adult circuit court all felony cases pertaining to the



201 child, for prosecution of the child as an adult, which have not  
 202 yet resulted in a plea of guilty or nolo contendere or in which  
 203 a finding of guilt has not been made. If a child is acquitted of  
 204 all charged offenses or lesser included offenses contained in  
 205 the original case transferred to adult court, all felony cases  
 206 that were transferred to adult court as a result of this  
 207 paragraph shall be subject to the same penalties to which such  
 208 cases would have been subject before being transferred to adult  
 209 court.

210 (c) When a child has been transferred for criminal  
 211 prosecution as an adult and has been found to have committed a  
 212 violation of state law, the disposition of the case may be made  
 213 under s. 985.565 and may include the enforcement of any  
 214 restitution ordered in any juvenile proceeding.

215 (3)~~(4)~~ CHARGES INCLUDED.—An information filed pursuant to  
 216 this section may include all charges that are based on the same  
 217 act, criminal episode, or transaction as the primary offenses.

218 Section 3. Section 985.56, Florida Statutes, is amended to  
 219 read:

220 985.56 Indictment of a juvenile.—

221 (1) A child 14 years of age or older ~~of any age~~ who is  
 222 charged with a violation of state law punishable by death or by  
 223 life imprisonment is subject to the jurisdiction of the court as  
 224 set forth in s. 985.0301(2) unless and until an indictment on  
 225 the charge is returned by the grand jury. When such indictment

226 is returned, the petition for delinquency, if any, must be  
227 dismissed and the child must be tried and handled in every  
228 respect as an adult:

229 (a) On the indicting offense punishable by death or by  
230 life imprisonment; and

231 (b) On all other felonies or misdemeanors charged in the  
232 indictment which are based on the same act or transaction as the  
233 indicting offense punishable by death or by life imprisonment or  
234 on one or more acts or transactions connected with the indicting  
235 offense punishable by death or by life imprisonment.

236 (2) An adjudicatory hearing may not be held until 21 days  
237 after the child is taken into custody and charged with having  
238 committed an indictable offense punishable by death or by life  
239 imprisonment, unless the state attorney advises the court in  
240 writing that he or she does not intend to present the case to  
241 the grand jury, or has presented the case to the grand jury and  
242 the grand jury has not returned an indictment. If the court  
243 receives such a notice from the state attorney, or if the grand  
244 jury fails to act within the 21-day period, the court may  
245 proceed as otherwise authorized under this part.

246 (3) Notwithstanding any other law, a child who is eligible  
247 for indictment and who has a pending competency hearing in  
248 juvenile court or who has been previously found to be incompetent  
249 and has not been restored to competency by a court may not be  
250 transferred to adult court for criminal prosecution until the

251 child's competency is restored. A pending competency hearing or a  
252 finding of incompetency tolls the time limits in subsection (2).

253 If the child is found to have committed the indictable offense  
254 punishable by death or by life imprisonment, the child may ~~shall~~  
255 be sentenced pursuant to s. 985.565 ~~as an adult~~. If the juvenile  
256 is not found to have committed the indictable offense but is  
257 found to have committed a lesser included offense or any other  
258 offense for which he or she was indicted as a part of the  
259 criminal episode, the court may sentence under s. 985.565.

260 (4) (a) If ~~Once~~ a child has been indicted pursuant to this  
261 section and has been found to have committed any offense for  
262 which he or she was indicted as a part of the criminal episode,  
263 the child shall be handled thereafter in every respect as if an  
264 adult for any subsequent violation of state law, unless the  
265 court imposes juvenile sanctions under s. 985.565.

266 (b) If ~~When~~ a child has been indicted pursuant to this  
267 section, the court shall immediately transfer and certify to the  
268 adult circuit court all felony cases pertaining to the child,  
269 for prosecution of the child as an adult, which have not yet  
270 resulted in a plea of guilty or nolo contendere or in which a  
271 finding of guilt has not been made. If the child is acquitted of  
272 all charged offenses or lesser included offenses contained in  
273 the indictment case, all felony cases that were transferred to  
274 adult court pursuant to this paragraph shall be subject to the  
275 same penalties such cases were subject to before being

276 transferred to adult court.

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

279 985.03 Definitions.—As used in this chapter, the term:

280 (54) "Waiver hearing" means a hearing provided for under  
 281 s. 985.556(3) ~~985.556(4)~~.

282 Section 5. Paragraphs (a) and (b) of subsection (4) of  
 283 section 985.565, Florida Statutes, are amended to read:

284 985.565 Sentencing powers; procedures; alternatives for  
 285 juveniles prosecuted as adults.—

286 (4) SENTENCING ALTERNATIVES.—

287 (a) Adult sanctions.—

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

295 a. As an adult;

296 b. Under chapter 958; or

297 c. As a juvenile under this section.

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

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

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

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

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

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

322 (b) Juvenile sanctions.—For juveniles transferred to adult  
 323 court but who do not qualify for such transfer under s.  
 324 985.556(2) ~~985.556(3)~~ or s. ~~985.557(2)(a) or (b)~~, the court may  
 325 impose juvenile sanctions under this paragraph. If juvenile

326 sentences are imposed, the court shall, under this paragraph,  
327 adjudge the child to have committed a delinquent act.  
328 Adjudication of delinquency shall not be deemed a conviction,  
329 nor shall it operate to impose any of the civil disabilities  
330 ordinarily resulting from a conviction. The court shall impose  
331 an adult sanction or a juvenile sanction and may not sentence  
332 the child to a combination of adult and juvenile punishments. An  
333 adult sanction or a juvenile sanction may include enforcement of  
334 an order of restitution or probation previously ordered in any  
335 juvenile proceeding. However, if the court imposes a juvenile  
336 sanction and the department determines that the sanction is  
337 unsuitable for the child, the department shall return custody of  
338 the child to the sentencing court for further proceedings,  
339 including the imposition of adult sanctions. Upon adjudicating a  
340 child delinquent under subsection (1), the court may:

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

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

351 notice shall be considered approval for discharge.

352 3. Order disposition under ss. 985.435, 985.437, 985.439,  
353 985.441, 985.45, and 985.455 as an alternative to youthful  
354 offender or adult sentencing if the court determines not to  
355 impose youthful offender or adult sanctions.

356

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

361 Section 6. This act shall take effect July 1, 2019.