

1 A bill to be entitled
 2 An act relating to direct filing of an information;
 3 amending s. 985.557, F.S.; deleting references to the
 4 state attorney's discretion to direct file a juvenile;
 5 revising discretionary direct file criteria; deleting
 6 provisions for mandatory direct file; providing for an
 7 opportunity for a hearing to reverse a direct file;
 8 amending s. 985.265, F.S.; revising provisions
 9 concerning the housing of children held in detention;
 10 providing an effective date.

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 12 Be It Enacted by the Legislature of the State of Florida:

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 14 Section 1. Subsections (1) and (2) of section 985.557,
 15 Florida Statutes, are amended to read:

16 985.557 Direct filing of an information; discretionary ~~and~~
 17 ~~mandatory~~ criteria.—

18 (1) DISCRETIONARY DIRECT FILE.—

19 (a) With respect to any child who was 14 or 15 years of
 20 age at the time the alleged offense was committed, the state
 21 attorney may file an information when ~~in the state attorney's~~
 22 ~~judgment and discretion~~ the public interest requires that adult
 23 sanctions be considered or imposed and when the offense charged
 24 is for the commission of or, attempt to commit, ~~or conspiracy to~~
 25 ~~commit~~:

- 26 | 1. Arson;
- 27 | 2. Sexual battery;
- 28 | 3. Robbery;
- 29 | 4. Kidnapping;
- 30 | 5. Aggravated child abuse;
- 31 | 6. Aggravated assault;
- 32 | 7. Aggravated stalking;
- 33 | 8. Murder;
- 34 | 9. Manslaughter;
- 35 | 10. Unlawful throwing, placing, or discharging of a
- 36 | destructive device or bomb;
- 37 | 11. Armed burglary in violation of s. 810.02(2)(b) or
- 38 | specified burglary of a dwelling or structure in violation of s.
- 39 | 810.02(2)(c), or burglary with an assault or battery in
- 40 | violation of s. 810.02(2)(a);
- 41 | 12. Aggravated battery;
- 42 | 13. Any lewd or lascivious offense committed upon or in
- 43 | the presence of a person less than 16 years of age;
- 44 | 14. Carrying, displaying, using, threatening, or
- 45 | attempting to use a weapon or firearm during the commission of a
- 46 | felony;
- 47 | 15. Grand theft in violation of s. 812.014(2)(a);
- 48 | 16. Possessing or discharging any weapon or firearm on
- 49 | school property in violation of s. 790.115;
- 50 | 17. Home invasion robbery;

51 18. Carjacking; or
 52 19. Grand theft of a motor vehicle in violation of s.
 53 812.014(2)(c)6. or grand theft of a motor vehicle valued at
 54 \$20,000 or more in violation of s. 812.014(2)(b) if the child
 55 has a previous adjudication for grand theft of a motor vehicle
 56 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

57 (b) With respect to any child who was 16 or 17 years of
 58 age at the time the alleged offense was committed, the state
 59 attorney may file an information when ~~in the state attorney's~~
 60 ~~judgment and discretion~~ the public interest requires that adult
 61 sanctions be considered or imposed. However, the state attorney
 62 may not file an information on a child charged with a
 63 misdemeanor, unless the child has had at least two previous
 64 adjudications ~~or adjudications withheld~~ for delinquent acts, one
 65 of which involved an offense classified as a felony under state
 66 law.

67 (2) DUE PROCESS HEARING BEFORE A JUDGE.—Notwithstanding
 68 any other law, and in all cases, any child charged with a crime
 69 shall have an evidentiary hearing, after the state attorney's
 70 filing of an information in adult court under this section.

71 (a) The judge shall conduct the hearing within 30 days,
 72 excluding Saturdays, Sundays, and legal holidays, unless good
 73 cause is shown for a delay by the child or the child's attorney.
 74 The purpose of the hearing is for the court to determine whether
 75 it is necessary for protection of the community that the child

76 | is prosecuted in adult court. The judge shall consider:

77 | 1. Evaluations and assessments completed by the

78 | department.

79 | 2. The sophistication and maturity of the child,

80 | including:

81 | a. The effect, if any, of immaturity, impetuosity, or

82 | failure to appreciate risks and consequences on the child's

83 | participation in the offense.

84 | b. The child's age, maturity, intellectual capacity, and

85 | mental and emotional health at the time of the offense.

86 | c. The effect, if any, of characteristics attributable to

87 | the child's youth on the child's judgment.

88 | 3. The record and previous history of the child,

89 | including:

90 | a. Previous contacts with the department, the Department

91 | of Corrections, the Department of Children and Families, other

92 | law enforcement agencies, and the courts.

93 | b. Prior periods of probation.

94 | c. Prior adjudications that the child committed a

95 | delinquent act or violation of law, with greater weight being

96 | given if the child has previously been found by a court to have

97 | committed a delinquent act or violation of law involving

98 | violence to persons.

99 | d. Prior commitments to institutions of the department,

100 | the Department of Corrections, or agencies under contract with

101 either department.

102 e. History of trauma, abuse or neglect, foster care
103 placements, failed adoption, fetal alcohol syndrome, exposure to
104 controlled substances at birth, and below average intellectual
105 functioning.

106 f. Identification of the child as a student requiring
107 exceptional student education or having previously received
108 psychological services.

109 g. Whether the child has previously been convicted and
110 sentenced as an adult.

111 4. The nature of the alleged offense and the child's
112 participation, including:

113 a. Whether the offense is punishable by death or life
114 imprisonment.

115 b. Whether the offense was against persons or property.

116 c. Whether the offense is alleged to have been committed
117 in an aggressive, violent, or premeditated manner.

118 d. The extent of the child's alleged participation in the
119 offense.

120 e. The effect, if any, of familial pressure or peer
121 pressure on the child's actions.

122 5. The prospects for adequate protection of the public and
123 the likelihood of reasonable rehabilitation of the child, if the
124 child is found to have committed the alleged offense:

125 a. By the use of procedures, services, and facilities

126 currently available to the juvenile court.

127 b. By the use of procedures, services, and facilities
128 currently available to the adult court, including whether the
129 lowest permissible sentence under the Criminal Punishment Code
130 is a nonstate prison sanction.

131 6. Cost-effective alternatives available to divert the
132 child from the criminal and juvenile justice systems and offer
133 rehabilitative services for the child.

134 7. Whether the child could obtain habilitative or
135 rehabilitative services available in the juvenile justice
136 system.

137 8. Whether the child could receive a sentence in juvenile
138 court that would provide adequate safety and protection for the
139 community.

140 9. Whether the child's best interests would be served by
141 prosecuting the child in juvenile court.

142 (b) The judge may consider any reports that may assist the
143 court, including prior pre-disposition reports, psycho-social
144 assessments, individualized educational programs (IEPs),
145 developmental assessments, school records, abuse or neglect
146 reports, home studies, protective investigations, and
147 psychological and psychiatric evaluations. The child, the
148 child's parents or legal guardians, defense counsel, and the
149 state attorney may examine these reports and question the
150 parties responsible for them at the hearing.

151 (c) The adult court shall retain jurisdiction unless the
152 court finds by a preponderance of evidence that the factors
153 listed in paragraph (a) support returning the child to juvenile
154 court.

155 (d) The adult court shall render an order including
156 specific findings of fact and the reasons for its decision. The
157 prosecution and defense may seek immediate review of the order
158 through interlocutory appeal. The order shall be reviewable on
159 appeal under s. 985.534 and the Florida Rules of Appellate
160 Procedure.

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

162 ~~(a) With respect to any child who was 16 or 17 years of~~
163 ~~age at the time the alleged offense was committed, the state~~
164 ~~attorney shall file an information if the child has been~~
165 ~~previously adjudicated delinquent for an act classified as a~~
166 ~~felony, which adjudication was for the commission of, attempt to~~
167 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~
168 ~~strong-armed robbery, carjacking, home invasion robbery,~~
169 ~~aggravated battery, or aggravated assault, and the child is~~
170 ~~currently charged with a second or subsequent violent crime~~
171 ~~against a person.~~

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

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

182 ~~(c) The state attorney must file an information if a~~
183 ~~child, regardless of the child's age at the time the alleged~~
184 ~~offense was committed, is alleged to have committed an act that~~
185 ~~would be a violation of law if the child were an adult, that~~
186 ~~involves stealing a motor vehicle, including, but not limited~~
187 ~~to, a violation of s. 812.133, relating to carjacking, or s.~~
188 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~
189 ~~while the child was in possession of the stolen motor vehicle~~
190 ~~the child caused serious bodily injury to or the death of a~~
191 ~~person who was not involved in the underlying offense. For~~
192 ~~purposes of this section, the driver and all willing passengers~~
193 ~~in the stolen motor vehicle at the time such serious bodily~~
194 ~~injury or death is inflicted shall also be subject to mandatory~~
195 ~~transfer to adult court. "Stolen motor vehicle," for the~~
196 ~~purposes of this section, means a motor vehicle that has been~~
197 ~~the subject of any criminal wrongful taking. For purposes of~~
198 ~~this section, "willing passengers" means all willing passengers~~
199 ~~who have participated in the underlying offense.~~

200 ~~(d)1. With respect to any child who was 16 or 17 years of~~

201 ~~age at the time the alleged offense was committed, the state~~
202 ~~attorney shall file an information if the child has been charged~~
203 ~~with committing or attempting to commit an offense listed in s.~~
204 ~~775.087(2)(a)1.a.-p., and, during the commission of or attempt~~
205 ~~to commit the offense, the child:~~

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

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

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

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

215 ~~a. Charged under sub-subparagraph 1.a. and who has been~~
216 ~~previously adjudicated or had adjudication withheld for a~~
217 ~~forcible felony offense or any offense involving a firearm, or~~
218 ~~who has been previously placed in a residential commitment~~
219 ~~program, shall be subject to sentencing under s. 775.087(2)(a),~~
220 ~~notwithstanding s. 985.565.~~

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

224 ~~3. Upon transfer, any child who is charged under this~~
225 ~~paragraph, but who does not meet the requirements specified in~~

226 ~~subparagraph 2., shall be sentenced under s. 985.565; however,~~
227 ~~if the court imposes a juvenile sanction, the court must commit~~
228 ~~the child to a high-risk or maximum-risk juvenile facility.~~

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

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

238 Section 2. Subsection (5) of section 985.265, Florida
239 Statutes, is renumbered as subsection (6), and a new subsection
240 (5) is added to that section, to read:

241 985.265 Detention transfer and release; education; adult
242 jails.—

243 (5) Notwithstanding any other provision of law, a child
244 subject to direct file shall not be held in a jail or other
245 facility intended or used for the detention of adults prior to a
246 court finding as a result of a hearing provided for in s.
247 985.557(2) that the child should be prosecuted as an adult.

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