



382004

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2019	.	
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The Committee on Appropriations (Powell) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 5058 - 5061  
and insert:

Section 80. Subsection (5) of section 985.265, Florida Statutes, is amended to read:

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

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



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11 (a) When the child has been transferred or indicted for  
12 criminal prosecution as an adult under part X, except that:

13 1. The court may not order or allow a child alleged to have  
14 committed a misdemeanor who is being transferred for criminal  
15 prosecution pursuant to either s. 985.556 or s. 985.557 to be  
16 detained or held in a jail or other facility intended or used  
17 for the detention of adults; however, such child may be held  
18 temporarily in a detention facility; or

19 2. A child who has been transferred for criminal  
20 prosecution as an adult pursuant to s. 985.557 shall not be held  
21 in a jail or other facility intended or used for the detention  
22 of adults prior to a court finding as a result of a hearing  
23 provided for in s. 985.557(2) that the child should be  
24 prosecuted as an adult; or

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

27  
28 The child shall be housed separately from adult inmates to  
29 prohibit a child from having regular contact with incarcerated  
30 adults, including trustees. "Regular contact" means sight and  
31 sound contact. Separation of children from adults shall permit  
32 no more than haphazard or accidental contact. The receiving jail  
33 or other facility shall contain a separate section for children  
34 and shall have an adequate staff to supervise and monitor the  
35 child's activities at all times. Supervision and monitoring of  
36 children includes physical observation and documented checks by  
37 jail or receiving facility supervisory personnel at intervals  
38 not to exceed 10 minutes. This subsection does not prohibit  
39 placing two or more children in the same cell. Under no



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40 circumstances shall a child be placed in the same cell with an  
41 adult.

42 Section 81. For the purpose of incorporating the amendment  
43 made by this act to section 985.557, Florida Statutes, in a  
44 reference thereto, subsection (3) of section 985.556, Florida  
45 Statutes, is reenacted to read:

46 985.556 Waiver of juvenile court jurisdiction; hearing.-

47 (3) INVOLUNTARY MANDATORY WAIVER.-

48 (a) If the child was 14 years of age or older, and if the  
49 child has been previously adjudicated delinquent for an act  
50 classified as a felony, which adjudication was for the  
51 commission of, attempt to commit, or conspiracy to commit  
52 murder, sexual battery, armed or strong-armed robbery,  
53 carjacking, home-invasion robbery, aggravated battery,  
54 aggravated assault, or burglary with an assault or battery, and  
55 the child is currently charged with a second or subsequent  
56 violent crime against a person; or

57 (b) If the child was 14 years of age or older at the time  
58 of commission of a fourth or subsequent alleged felony offense  
59 and the child was previously adjudicated delinquent or had  
60 adjudication withheld for or was found to have committed, or to  
61 have attempted or conspired to commit, three offenses that are  
62 felony offenses if committed by an adult, and one or more of  
63 such felony offenses involved the use or possession of a firearm  
64 or violence against a person;

65  
66 the state attorney shall request the court to transfer and  
67 certify the child for prosecution as an adult or shall provide  
68 written reasons to the court for not making such request, or



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69 proceed under s. 985.557(1). Upon the state attorney's request,  
70 the court shall either enter an order transferring the case and  
71 certifying the case for trial as if the child were an adult or  
72 provide written reasons for not issuing such an order.

73 Section 82. Subsection (1) and present subsection (2) of  
74 section 985.557, Florida Statutes, are amended, and a new  
75 subsection (2) is added to that section, to read:

76 985.557 Direct filing of an information; discretionary ~~and~~  
77 ~~mandatory~~ criteria.—

78 (1) DISCRETIONARY DIRECT FILE.—

79 (a) With respect to any child who was 14 or 15 years of age  
80 at the time the alleged offense was committed, the state  
81 attorney may file an information when ~~in the state attorney's~~  
82 ~~judgment and discretion~~ the public interest requires that adult  
83 sanctions be considered or imposed and when the offense charged  
84 is for the commission of, or attempt to commit any of the  
85 following, ~~or conspiracy to commit~~:

- 86 1. Arson.†
- 87 2. Sexual battery.†
- 88 3. Robbery.†
- 89 4. Kidnapping.†
- 90 5. Aggravated child abuse.†
- 91 6. Aggravated assault.†
- 92 7. Aggravated stalking.†
- 93 8. Murder.†
- 94 9. Manslaughter.†
- 95 10. Unlawful throwing, placing, or discharging of a  
96 destructive device or bomb.†
- 97 11. Armed burglary in violation of s. 810.02(2)(b) or



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98 specified burglary of a dwelling or structure in violation of s.  
99 810.02(2)(c), or burglary with an assault or battery in  
100 violation of s. 810.02(2)(a).~~†~~

101 12. Aggravated battery.~~†~~

102 13. Any lewd or lascivious offense committed upon or in the  
103 presence of a person less than 16 years of age.~~†~~

104 14. Carrying, displaying, using, threatening, or attempting  
105 to use a weapon or firearm during the commission of a felony.~~†~~

106 15. Grand theft in violation of s. 812.014(2)(a).~~†~~

107 16. Possessing or discharging any weapon or firearm on  
108 school property in violation of s. 790.115.~~†~~

109 17. Home invasion robbery.~~†~~

110 18. Carjacking.~~†~~~~or~~

111 19. Grand theft of a motor vehicle in violation of s.  
112 812.014(2)(c)6. or grand theft of a motor vehicle valued at  
113 \$20,000 or more in violation of s. 812.014(2)(b) if the child  
114 has a previous adjudication for grand theft of a motor vehicle  
115 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

116 (b) With respect to any child who was 16 or 17 years of age  
117 at the time the alleged offense was committed, the state  
118 attorney may file an information when ~~in the state attorney's~~  
119 ~~judgment and discretion~~ the public interest requires that adult  
120 sanctions be considered or imposed. However, the state attorney  
121 may not file an information on a child charged with a  
122 misdemeanor, unless the child has had at least two previous  
123 adjudications ~~or adjudications withheld~~ for delinquent acts, one  
124 of which involved an offense classified as a felony under state  
125 law.

126 (2) DUE PROCESS HEARING BEFORE A JUDGE.—Notwithstanding any



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127 other law, and in all cases, any child charged with a crime  
128 shall have an evidentiary hearing, after the state attorney's  
129 filing of an information in adult court under this section.

130 (a) The judge shall conduct the hearing within 30 days,  
131 excluding Saturdays, Sundays, and legal holidays, unless good  
132 cause is shown for a delay by the child or the child's attorney.  
133 The purpose of the hearing is for the court to determine whether  
134 it is necessary for protection of the community that the child  
135 is prosecuted in adult court. The judge shall consider all of  
136 the following:

137 1. Evaluations and assessments completed by the department.

138 2. The sophistication and maturity of the child, including:

139 a. The effect, if any, of immaturity, impetuosity, or  
140 failure to appreciate risks and consequences on the child's  
141 participation in the alleged offense.

142 b. The child's age, maturity, intellectual capacity, and  
143 mental and emotional health at the time of the alleged offense.

144 c. The effect, if any, of characteristics attributable to  
145 the child's youth on the child's judgment.

146 3. The record and previous history of the child, including:

147 a. Previous contacts with the department, the Department of  
148 Corrections, the Department of Children and Families, other law  
149 enforcement agencies, and the courts.

150 b. Prior periods of probation.

151 c. Prior adjudications that the child committed a  
152 delinquent act or violation of law, with greater weight being  
153 given if the child has previously been found by a court to have  
154 committed a delinquent act or violation of law involving  
155 violence to persons.



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156 d. Prior commitments to institutions of the department, the  
157 Department of Corrections, or agencies under contract with  
158 either department.

159 e. History of trauma, abuse or neglect, foster care  
160 placements, failed adoption, fetal alcohol syndrome, exposure to  
161 controlled substances at birth, and below-average intellectual  
162 functioning.

163 f. Identification of the child as a student requiring  
164 exceptional student education or having previously received  
165 psychological services.

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

168 a. Whether the alleged offense is punishable by death or  
169 life imprisonment.

170 b. Whether the alleged offense was against persons or  
171 property.

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

174 d. The extent of the child's participation in the alleged  
175 offense.

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

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

181 a. By the use of procedures, services, and facilities  
182 currently available to the juvenile court.

183 b. By the use of procedures, services, and facilities  
184 currently available to the adult court, including whether the



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185 lowest permissible sentence under the Criminal Punishment Code  
186 is a nonstate prison sanction.

187 6. Whether the child could obtain habilitative or  
188 rehabilitative services available in the juvenile justice  
189 system.

190 7. Whether the child could receive a sentence in juvenile  
191 court that would provide adequate safety and protection for the  
192 community.

193 8. Whether the child's best interests would be served by  
194 prosecuting the child in juvenile court.

195 (b) The judge may consider any reports that may assist the  
196 court, including prior pre-disposition reports, psycho-social  
197 assessments, individualized educational programs (IEPs),  
198 developmental assessments, school records, abuse or neglect  
199 reports, home studies, protective investigations, and  
200 psychological and psychiatric evaluations. The child, the  
201 child's parents or legal guardians, defense counsel, and the  
202 state attorney may examine these reports and question the  
203 parties responsible for creating them at the hearing.

204 (c) The adult court shall retain jurisdiction unless the  
205 court finds by a preponderance of the evidence that the factors  
206 listed in paragraph (a) support returning the child to juvenile  
207 court.

208 (d) The adult court shall render an order including  
209 specific findings of fact and the reasons for its decision. The  
210 prosecution and defense may seek immediate review of the order  
211 through interlocutory appeal. The order shall be reviewable on  
212 appeal under the Florida Rules of Appellate Procedure.

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

215 And the title is amended as follows:

216       Delete line 521

217 and insert:

218       specified instances; amending s. 985.265, F.S.;

219       revising provisions concerning the housing of children

220       held in detention; prohibiting a child who has been

221       transferred to adult court for criminal prosecution

222       pursuant to direct file from being held in a jail or

223       other facility used for the detention of adults prior

224       to a hearing to determine if the child should remain

225       in adult court; reenacting s. 985.556(3), F.S.,

226       relating to involuntary mandatory waiver, to

227       incorporate the amendment made to s. 985.557, F.S., in

228       a reference thereto ; amending s. 985.557, F.S.;

229       deleting references to the state attorney's discretion

230       to direct file a juvenile; revising discretionary

231       direct file criteria; deleting provisions for

232       mandatory direct file; providing for an opportunity

233       for a hearing to reverse a direct file;