

By Senator Powell

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1 A bill to be entitled
2 An act relating to juvenile justice; amending s.
3 985.557, F.S.; authorizing a child transferred to
4 adult court under certain provisions, or the child's
5 defense counsel, to request in writing a hearing for a
6 certain determination; requiring a judge to conduct
7 the hearing within a certain timeframe after the
8 filing of the request; providing an exception;
9 requiring the judge to consider specified factors;
10 authorizing the judge to consider specified records;
11 providing for the right of specified persons at the
12 hearing to examine the records and question the
13 persons who created the records; requiring the adult
14 court to retain jurisdiction unless the court finds by
15 a preponderance of the evidence that certain factors
16 support returning the child to juvenile court;
17 requiring the adult court to render an order on its
18 decision; providing for review on appeal; providing an
19 effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 985.557, Florida Statutes, is amended to
24 read:

25 985.557 Direct filing of an information; discretionary and
26 mandatory criteria.—

27 (1) DISCRETIONARY DIRECT FILE.—

28 (a) With respect to any child who was 14 or 15 years of age
29 at the time the alleged offense was committed, the state

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30 attorney may file an information when in the state attorney's
31 judgment and discretion the public interest requires that adult
32 sanctions be considered or imposed and when the offense charged
33 is for the commission of, attempt to commit, or conspiracy to
34 commit any of the following:

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

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59 18. Carjacking.~~;~~~~or~~

60 19. Grand theft of a motor vehicle in violation of s.
61 812.014(2)(c)6. or grand theft of a motor vehicle valued at
62 \$20,000 or more in violation of s. 812.014(2)(b) if the child
63 has a previous adjudication for grand theft of a motor vehicle
64 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

65 (b) With respect to any child who was 16 or 17 years of age
66 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. However, the state attorney
70 may not file an information on a child charged with a
71 misdemeanor, unless the child has had at least two previous
72 adjudications or adjudications withheld for delinquent acts, one
73 of which involved an offense classified as a felony under state
74 law.

75 (2) MANDATORY DIRECT FILE.-

76 (a) With respect to any child who was 16 or 17 years of age
77 at the time the alleged offense was committed, the state
78 attorney shall file an information if the child has been
79 previously adjudicated delinquent for an act classified as a
80 felony, which adjudication was for the commission of, attempt to
81 commit, or conspiracy to commit murder, sexual battery, armed or
82 strong-armed robbery, carjacking, home-invasion robbery,
83 aggravated battery, or aggravated assault, and the child is
84 currently charged with a second or subsequent violent crime
85 against a person.

86 (b) With respect to any child 16 or 17 years of age at the
87 time an offense classified as a forcible felony, as defined in

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88 s. 776.08, was committed, the state attorney shall file an
89 information if the child has previously been adjudicated
90 delinquent or had adjudication withheld for three acts
91 classified as felonies each of which occurred at least 45 days
92 apart from each other. This paragraph does not apply when the
93 state attorney has good cause to believe that exceptional
94 circumstances exist which preclude the just prosecution of the
95 juvenile in adult court.

96 (c) The state attorney must file an information if a child,
97 regardless of the child's age at the time the alleged offense
98 was committed, is alleged to have committed an act that would be
99 a violation of law if the child were an adult, that involves
100 stealing a motor vehicle, including, but not limited to, a
101 violation of s. 812.133, relating to carjacking, or s.
102 812.014(2)(c)6., relating to grand theft of a motor vehicle, and
103 while the child was in possession of the stolen motor vehicle
104 the child caused serious bodily injury to or the death of a
105 person who was not involved in the underlying offense. For
106 purposes of this section, the driver and all willing passengers
107 in the stolen motor vehicle at the time such serious bodily
108 injury or death is inflicted shall also be subject to mandatory
109 transfer to adult court. "Stolen motor vehicle," for the
110 purposes of this section, means a motor vehicle that has been
111 the subject of any criminal wrongful taking. For purposes of
112 this section, "willing passengers" means all willing passengers
113 who have participated in the underlying offense.

114 (d)1. With respect to any child who was 16 or 17 years of
115 age at the time the alleged offense was committed, the state
116 attorney shall file an information if the child has been charged

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117 with committing or attempting to commit an offense listed in s.
118 775.087(2)(a)1.a.-p., and, during the commission of or attempt
119 to commit the offense, the child:

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

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

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

127 2. Upon transfer, any child who is:

128 a. Charged under sub-subparagraph 1.a. and who has been
129 previously adjudicated or had adjudication withheld for a
130 forcible felony offense or any offense involving a firearm, or
131 who has been previously placed in a residential commitment
132 program, shall be subject to sentencing under s. 775.087(2)(a),
133 notwithstanding s. 985.565.

134 b. Charged under sub-subparagraph 1.b. or sub-subparagraph
135 1.c., shall be subject to sentencing under s. 775.087(2)(a),
136 notwithstanding s. 985.565.

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

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

145 5. The Department of Corrections shall make every

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146 reasonable effort to ensure that any child 16 or 17 years of age
147 who is convicted and sentenced under this paragraph be
148 completely separated such that there is no physical contact with
149 adult offenders in the facility, to the extent that it is
150 consistent with chapter 958.

151 (3) EFFECT OF DIRECT FILE.—

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

158 (b) When a child is transferred for criminal prosecution as
159 an adult, the court shall immediately transfer and certify to
160 the adult circuit court all felony cases pertaining to the
161 child, for prosecution of the child as an adult, which have not
162 yet resulted in a plea of guilty or nolo contendere or in which
163 a finding of guilt has not been made. If a child is acquitted of
164 all charged offenses or lesser included offenses contained in
165 the original case transferred to adult court, all felony cases
166 that were transferred to adult court as a result of this
167 paragraph shall be subject to the same penalties to which such
168 cases would have been subject before being transferred to adult
169 court.

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

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175 (4) CHARGES INCLUDED ON INFORMATION.—An information filed
176 pursuant to this section may include all charges that are based
177 on the same act, criminal episode, or transaction as the primary
178 offenses.

179 (5) HEARING BEFORE JUDGE.—A child who is transferred to
180 adult court under this section or s. 985.56, or the child's
181 defense counsel, may request in writing a hearing to determine
182 whether the child must remain in adult court.

183 (a) The judge shall conduct the hearing within 30 days,
184 excluding weekends and legal holidays, after the filing of the
185 request, unless good cause is shown for a delay. The purpose of
186 the hearing is for the court to determine whether it is
187 necessary for protection of the community that the child is
188 prosecuted in adult court. The judge shall consider all of the
189 following:

190 1. The recommendation of the department, through review and
191 consideration of the recommendations of the department's
192 caseworker.

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

194 a. The effect, if any, of immaturity, impetuosity, or
195 failure to appreciate risks and consequences on the child's
196 participation in the offense.

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

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

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

202 a. Prior contacts with the department, the Department of
203 Corrections, the Department of Children and Families, other law

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204 enforcement agencies, or the courts.

205 b. Prior periods of probation.

206 c. Prior adjudications that the child committed a
207 delinquent act or violation of law, with greater weight being
208 given if the child has previously been found by a court to have
209 committed a delinquent act or violation of law involving
210 violence to persons.

211 d. Prior commitments to institutions of the department, the
212 Department of Corrections, or agencies under contract with
213 either department.

214 e. Patterns of criminality or patterns of escalation.

215 f. History of trauma, abuse or neglect, foster care
216 placements, failed adoption, fetal alcohol syndrome, exposure to
217 controlled substances at birth, or below-average intellectual
218 functioning.

219 g. Identification of the child as a student requiring
220 exceptional student education or having previously received
221 psychological services.

222 h. Whether the child has previously been convicted and
223 sentenced as an adult.

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

226 a. Whether the offense is punishable by death or life
227 imprisonment.

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

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

231 d. The extent of the child's alleged participation in the
232 offense.

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

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

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

240 b. By the use of procedures, services, and facilities
241 currently available to the adult court, including whether the
242 lowest permissible sentence under the Criminal Punishment Code
243 is a nonstate prison sanction.

244 6. Cost-effective alternatives available to divert the
245 child from the criminal justice system and the juvenile justice
246 system and offer rehabilitative services for the child.

247 7. Whether the child could obtain habilitative or
248 rehabilitative services available in the juvenile justice
249 system.

250 8. Whether the child could receive a sentence in juvenile
251 court that would provide adequate safety and protection for the
252 community.

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

255 (b) The judge may consider any reports that may assist him
256 or her, including prior pre-disposition reports, psycho-social
257 assessments, individualized educational programs, developmental
258 assessments, school records, abuse or neglect reports, home
259 studies, protective investigations, or psychological or
260 psychiatric evaluations. The child, the child's parents or legal
261 guardians, the child's defense counsel, and the state attorney

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262 have the right to examine these records and to question the
263 parties responsible for creating them at the hearing.

264 (c) The adult court shall retain jurisdiction unless the
265 court finds by a preponderance of the evidence that the factors
266 listed in subsection (a) support returning the child to juvenile
267 court.

268 (d) The adult court shall render an order including
269 specific findings of fact and the reasons for its decision. The
270 order is reviewable on appeal under s. 985.534 and the Florida
271 Rules of Appellate Procedure.

272 Section 2. This act shall take effect July 1, 2019.