

By Senator Powell

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1 A bill to be entitled
2 An act relating to direct filing of an information;
3 amending s. 985.265, F.S.; revising provisions
4 concerning the housing of children held in detention;
5 prohibiting a child who has been transferred to adult
6 court for criminal prosecution pursuant to direct file
7 from being held in a jail or other facility used for
8 the detention of adults prior to a specified hearing
9 to determine if the child should be prosecuted as an
10 adult; amending s. 985.557, F.S.; deleting references
11 to the state attorney's discretion to direct file a
12 juvenile; revising discretionary direct file criteria;
13 requiring a court to advise a child and his or her
14 parent or guardian of their right to a certain due
15 process evidentiary hearing upon a state attorney
16 filing an information transferring a child to adult
17 court; authorizing the child or the child's parent or
18 guardian to request an evidentiary hearing; requiring
19 the judge to conduct the hearing within a certain
20 timeframe; requiring a judge to consider specified
21 information and factors; authorizing a judge to
22 consider certain reports; providing for continued
23 jurisdiction with regard to the child; providing an
24 exception; requiring the adult court to render an
25 order that includes certain findings; authorizing
26 review of the order; reenacting s. 985.556(3), F.S.,
27 relating to involuntary mandatory waivers, to
28 incorporate the amendments made to s. 985.557, F.S.,
29 in a reference thereto; providing an effective date.

30-00512-20

2020610__

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

Section 1. 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:

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

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

2. A child who has been transferred for criminal prosecution as an adult pursuant to s. 985.557 may not be held in a jail or other facility intended or used for the detention of adults prior to a court finding, as a result of a hearing provided for under s. 985.557(3), that the child should be prosecuted as an adult; or

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

The child shall be housed separately from adult inmates to prohibit a child from having regular contact with incarcerated adults, including trustees. "Regular contact" means sight and

30-00512-20

2020610__

59 sound contact. Separation of children from adults shall permit
60 no more than haphazard or accidental contact. The receiving jail
61 or other facility shall contain a separate section for children
62 and shall have an adequate staff to supervise and monitor the
63 child's activities at all times. Supervision and monitoring of
64 children includes physical observation and documented checks by
65 jail or receiving facility supervisory personnel at intervals
66 not to exceed 10 minutes. This subsection does not prohibit
67 placing two or more children in the same cell. Under no
68 circumstances shall a child be placed in the same cell with an
69 adult.

70 Section 2. Section 985.557, Florida Statutes, is amended to
71 read:

72 985.557 Direct filing of an information; discretionary
73 criteria.—

74 (1) DISCRETIONARY DIRECT FILE.—

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

- 82 1. Arson.†
- 83 2. Sexual battery.†
- 84 3. Robbery.†
- 85 4. Kidnapping.†
- 86 5. Aggravated child abuse.†
- 87 6. Aggravated assault.†

30-00512-20

2020610__

88 7. Aggravated stalking.†

89 8. Murder.†

90 9. Manslaughter.†

91 10. Unlawful throwing, placing, or discharging of a
92 destructive device or bomb.†

93 11. Armed burglary in violation of s. 810.02(2)(b), ~~or~~
94 specified burglary of a dwelling or structure in violation of s.
95 810.02(2)(c), or burglary with an assault or battery in
96 violation of s. 810.02(2)(a).†

97 12. Aggravated battery.†

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

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

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

103 16. Possessing or discharging any weapon or firearm on
104 school property in violation of s. 790.115.†

105 17. Home invasion robbery.†

106 18. Carjacking.~~†~~~~or~~

107 19. Grand theft of a motor vehicle in violation of s.
108 812.014(2)(c)6. or grand theft of a motor vehicle valued at
109 \$20,000 or more in violation of s. 812.014(2)(b) if the child
110 has a previous adjudication for grand theft of a motor vehicle
111 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

112 (b) With respect to any child who was 16 or 17 years of age
113 at the time the alleged offense was committed, the state
114 attorney may file an information when ~~in the state attorney's~~
115 ~~judgment and discretion~~ the public interest requires that adult
116 sanctions be considered or imposed. However, the state attorney

30-00512-20

2020610__

117 may not file an information on a child charged with a
118 misdemeanor, unless the child has had at least two previous
119 adjudications ~~or adjudications withheld~~ for delinquent acts, one
120 of which involved an offense classified as a felony under state
121 law.

122 (2) NOTIFICATION TO PARENT OR GUARDIAN.—Upon a state
123 attorney filing an information transferring a child to adult
124 court, the court must advise the child and his or her parent or
125 guardian that the child has the right to a due process
126 evidentiary hearing before a judge, and the child or the parent
127 or guardian may request such evidentiary hearing.

128 (3) DUE PROCESS EVIDENTIARY HEARING BEFORE A JUDGE.—
129 Notwithstanding any other law, and in all cases, a child charged
130 with a crime or his or her parent or guardian may request a due
131 process evidentiary hearing after the state attorney's filing of
132 an information in adult court under this section.

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

140 1. Evaluations and assessments completed by the department.

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

142 a. The effect, if any, of immaturity, impetuosity, or
143 failure to appreciate risks and consequences of the child's
144 participation in the alleged offense.

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

30-00512-20

2020610__

146 mental and emotional health at the time of the alleged offense.

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

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

150 a. Previous contacts with the department, the Department of
151 Corrections, the Department of Children and Families, other law
152 enforcement agencies, and the courts.

153 b. Prior periods of probation.

154 c. Prior adjudications that the child committed a
155 delinquent act or violation of law, with greater weight being
156 given if a court previously found that the child committed a
157 delinquent act or violation of law involving violence to
158 persons.

159 d. Prior commitments to institutions of the department, the
160 Department of Corrections, or agencies under contract with
161 either department.

162 e. Any history of trauma, abuse or neglect, foster care
163 placements, failed adoption, fetal alcohol syndrome, exposure to
164 controlled substances at birth, or below-average intellectual
165 functioning.

166 f. Identification of the child as a student requiring
167 exceptional student education or having previously received
168 psychological services.

169 4. The nature of the alleged offense and the child's
170 participation in it, including:

171 a. Whether the alleged offense is punishable by death or
172 life imprisonment.

173 b. Whether the alleged offense was against persons or
174 property.

30-00512-20

2020610__

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

177 d. The extent of the child's participation in the alleged
178 offense.

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

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

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

186 b. By the use of procedures, services, and facilities
187 currently available to the adult court, including whether the
188 lowest permissible sentence under the Criminal Punishment Code
189 is a nonstate prison sanction.

190 6. Whether the child could obtain habilitative or
191 rehabilitative services available in the juvenile justice
192 system.

193 7. Whether the child could receive a sentence in juvenile
194 court which would provide adequate safety and protection for the
195 community.

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

198 (b) The judge may consider any reports that may assist the
199 court, including prior predisposition reports, psychosocial
200 assessments, individual educational plans, developmental
201 assessments, school records, abuse or neglect reports, home
202 studies, protective investigations, and psychological and
203 psychiatric evaluations. The child, the child's parents or legal

30-00512-20

2020610__

204 guardians, his or her defense counsel, and the state attorney
205 may examine these reports and, at the hearing, question the
206 parties responsible for creating them.

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

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

216 (4) ~~(2)~~ EFFECT OF DIRECT FILE.-

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

223 (b) When a child is transferred for criminal prosecution as
224 an adult, the court shall immediately transfer and certify to
225 the adult circuit court all felony cases pertaining to the
226 child, for prosecution of the child as an adult, which have not
227 yet resulted in a plea of guilty or nolo contendere or in which
228 a finding of guilt has not been made. If a child is acquitted of
229 all charged offenses or lesser included offenses contained in
230 the original case transferred to adult court, all felony cases
231 that were transferred to adult court as a result of this
232 paragraph shall be subject to the same penalties to which such

30-00512-20

2020610__

233 cases would have been subject before being transferred to adult
234 court.

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

240 (5)~~(3)~~ CHARGES INCLUDED ON INFORMATION.—An information
241 filed pursuant to this section may include all charges that are
242 based on the same act, criminal episode, or transaction as the
243 primary offenses.

244 Section 3. For the purpose of incorporating the amendment
245 made by this act to section 985.557, Florida Statutes, in a
246 reference thereto, subsection (3) of section 985.556, Florida
247 Statutes, is reenacted to read:

248 985.556 Waiver of juvenile court jurisdiction; hearing.—

249 (3) INVOLUNTARY MANDATORY WAIVER.—

250 (a) If the child was 14 years of age or older, and if the
251 child has been previously adjudicated delinquent for an act
252 classified as a felony, which adjudication was for the
253 commission of, attempt to commit, or conspiracy to commit
254 murder, sexual battery, armed or strong-armed robbery,
255 carjacking, home-invasion robbery, aggravated battery,
256 aggravated assault, or burglary with an assault or battery, and
257 the child is currently charged with a second or subsequent
258 violent crime against a person; or

259 (b) If the child was 14 years of age or older at the time
260 of commission of a fourth or subsequent alleged felony offense
261 and the child was previously adjudicated delinquent or had

30-00512-20

2020610__

262 adjudication withheld for or was found to have committed, or to
263 have attempted or conspired to commit, three offenses that are
264 felony offenses if committed by an adult, and one or more of
265 such felony offenses involved the use or possession of a firearm
266 or violence against a person;

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268 the state attorney shall request the court to transfer and
269 certify the child for prosecution as an adult or shall provide
270 written reasons to the court for not making such request, or
271 proceed under s. 985.557(1). Upon the state attorney's request,
272 the court shall either enter an order transferring the case and
273 certifying the case for trial as if the child were an adult or
274 provide written reasons for not issuing such an order.

275 Section 4. This act shall take effect July 1, 2020.