

By Senator Powell

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1 A bill to be entitled
2 An act relating to prosecuting children as adults;
3 amending s. 985.556, F.S.; deleting provisions under
4 which a state attorney either must request a court to
5 transfer and certify children of certain ages who
6 commit specified crimes for prosecution as adults or
7 must provide written reasons to the court for not
8 making such a request, or proceed under certain
9 provisions; amending s. 985.557, F.S.; revising the
10 circumstances under which a state attorney may file an
11 information in cases that involve children of certain
12 ages who commit certain crimes; amending s. 985.56,
13 F.S.; providing that children 14 years of age or
14 older, rather than children of any age, who are
15 charged with certain offenses are subject to the
16 jurisdiction of the court until an indictment is
17 returned by the grand jury; prohibiting the transfer
18 to adult court for criminal prosecution of a child who
19 commits an indictable offense and who has a pending
20 competency hearing or who previously has been found
21 incompetent and has not been restored to competency by
22 a court until the child's competency is restored;
23 providing for the tolling of certain time limits;
24 authorizing, rather than requiring, that a child who
25 is found to have committed specified crimes be
26 sentenced according to certain provisions; amending s.
27 985.03, F.S.; conforming a cross-reference; amending
28 s. 985.565, F.S.; conforming provisions to changes
29 made by the act; reenacting ss. 985.15(1) and

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30 985.265(5), F.S., relating to filing decisions and
31 detention transfer and release, education, and adult
32 jails, respectively, to incorporate the amendment made
33 to s. 985.556, F.S., in references thereto; reenacting
34 s. 985.26(2)(c), F.S., relating to the length of
35 detention, to incorporate the amendment to s. 985.56,
36 F.S., in a reference thereto; providing an effective
37 date.

38
39 Be It Enacted by the Legislature of the State of Florida:

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41 Section 1. Subsections (2) and (3) of section 985.556,
42 Florida Statutes, are amended, and subsection (1) of that
43 section is republished, to read:

44 985.556 Waiver of juvenile court jurisdiction; hearing.—

45 (1) VOLUNTARY WAIVER.—The court shall transfer and certify
46 a child's criminal case for trial as an adult if the child is
47 alleged to have committed a violation of law and, prior to the
48 commencement of an adjudicatory hearing, the child, joined by a
49 parent or, in the absence of a parent, by the guardian or
50 guardian ad litem, demands in writing to be tried as an adult.
51 Once a child has been transferred for criminal prosecution
52 pursuant to a voluntary waiver hearing and has been found to
53 have committed the presenting offense or a lesser included
54 offense, the child shall be handled thereafter in every respect
55 as an adult for any subsequent violation of state law, unless
56 the court imposes juvenile sanctions under s. 985.565(4)(b).

57 (2) INVOLUNTARY DISCRETIONARY WAIVER.—~~Except as provided in~~
58 ~~subsection (3),~~ The state attorney may file a motion requesting

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59 the court to transfer the child for criminal prosecution if the
60 child was 14 years of age or older at the time the alleged
61 delinquent act or violation of law was committed.

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

63 ~~(a) If the child was 14 years of age or older, and if the~~
64 ~~child has been previously adjudicated delinquent for an act~~
65 ~~classified as a felony, which adjudication was for the~~
66 ~~commission of, attempt to commit, or conspiracy to commit~~
67 ~~murder, sexual battery, armed or strong armed robbery,~~
68 ~~earjacking, home-invasion robbery, aggravated battery,~~
69 ~~aggravated assault, or burglary with an assault or battery, and~~
70 ~~the child is currently charged with a second or subsequent~~
71 ~~violent crime against a person; or~~

72 ~~(b) If the child was 14 years of age or older at the time~~
73 ~~of commission of a fourth or subsequent alleged felony offense~~
74 ~~and the child was previously adjudicated delinquent or had~~
75 ~~adjudication withheld for or was found to have committed, or to~~
76 ~~have attempted or conspired to commit, three offenses that are~~
77 ~~felony offenses if committed by an adult, and one or more of~~
78 ~~such felony offenses involved the use or possession of a firearm~~
79 ~~or violence against a person;~~

80
81 ~~the state attorney shall request the court to transfer and~~
82 ~~certify the child for prosecution as an adult or shall provide~~
83 ~~written reasons to the court for not making such request, or~~
84 ~~proceed under s. 985.557(1). Upon the state attorney's request,~~
85 ~~the court shall either enter an order transferring the case and~~
86 ~~certifying the case for trial as if the child were an adult or~~
87 ~~provide written reasons for not issuing such an order.~~

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88 Section 2. Section 985.557, Florida Statutes, is amended to
 89 read:

90 985.557 Prosecuting children as adults ~~Direct filing of an~~
 91 ~~information;~~ discretionary criteria.-

92 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~
 93 ~~FILE.~~-

94 ~~(a) With respect to any child who was 14 or 15 years of age~~
 95 ~~at the time the alleged offense was committed, the state~~
 96 ~~attorney may file an information when in the state attorney's~~
 97 ~~judgment and discretion the public interest requires that adult~~
 98 ~~sanctions be considered or imposed and when the offense charged~~
 99 ~~is for the commission of, attempt to commit, or conspiracy to~~
 100 ~~commit:~~

- 101 1. ~~Arson;~~
- 102 2. ~~Sexual battery;~~
- 103 3. ~~Robbery;~~
- 104 4. ~~Kidnapping;~~
- 105 5. ~~Aggravated child abuse;~~
- 106 6. ~~Aggravated assault;~~
- 107 7. ~~Aggravated stalking;~~
- 108 8. ~~Murder;~~
- 109 9. ~~Manslaughter;~~
- 110 10. ~~Unlawful throwing, placing, or discharging of a~~
 111 ~~destructive device or bomb;~~
- 112 11. ~~Armed burglary in violation of s. 810.02(2)(b) or~~
 113 ~~specified burglary of a dwelling or structure in violation of s.~~
 114 ~~810.02(2)(c), or burglary with an assault or battery in~~
 115 ~~violation of s. 810.02(2)(a);~~
- 116 12. ~~Aggravated battery;~~

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117 ~~13. Any lewd or lascivious offense committed upon or in the~~
118 ~~presence of a person less than 16 years of age;~~

119 ~~14. Carrying, displaying, using, threatening, or attempting~~
120 ~~to use a weapon or firearm during the commission of a felony;~~

121 ~~15. Grand theft in violation of s. 812.014(2)(a);~~

122 ~~16. Possessing or discharging any weapon or firearm on~~
123 ~~school property in violation of s. 790.115;~~

124 ~~17. Home invasion robbery;~~

125 ~~18. Carjacking; or~~

126 ~~19. Grand theft of a motor vehicle in violation of s.~~
127 ~~812.014(2)(c)6. or grand theft of a motor vehicle valued at~~
128 ~~\$20,000 or more in violation of s. 812.014(2)(b) if the child~~
129 ~~has a previous adjudication for grand theft of a motor vehicle~~
130 ~~in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).~~

131 ~~(b)~~ With respect to any child who was 16 or 17 years of age
132 at the time the alleged violent felony offense was committed,
133 the state attorney may file an information when in the state
134 attorney's judgment and discretion the public interest requires
135 that adult sanctions be considered or imposed. However, the
136 state attorney may not file an information on a child charged
137 with a misdemeanor, unless the child has had at least two
138 previous adjudications or adjudications withheld for delinquent
139 acts, one of which involved an offense classified as a violent
140 felony under state law.

141 (2) EFFECT OF PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~
142 ~~FILE.~~—

143 (a) Once a child has been transferred for criminal
144 prosecution pursuant to an information and has been found to
145 have committed the presenting offense or a lesser included

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146 offense, the child shall be handled thereafter in every respect
147 as if an adult for any subsequent violation of state law, unless
148 the court imposes juvenile sanctions under s. 985.565.

149 (b) When a child is transferred for criminal prosecution as
150 an adult, the court shall immediately transfer and certify to
151 the adult circuit court all felony cases pertaining to the
152 child, for prosecution of the child as an adult, which have not
153 yet resulted in a plea of guilty or nolo contendere or in which
154 a finding of guilt has not been made. If a child is acquitted of
155 all charged offenses or lesser included offenses contained in
156 the original case transferred to adult court, all felony cases
157 that were transferred to adult court as a result of this
158 paragraph shall be subject to the same penalties to which such
159 cases would have been subject before being transferred to adult
160 court.

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

166 (3) CHARGES INCLUDED ON INFORMATION.—An information filed
167 pursuant to this section may include all charges that are based
168 on the same act, criminal episode, or transaction as the primary
169 offenses.

170 Section 3. Section 985.56, Florida Statutes, is amended to
171 read:

172 985.56 Indictment of a juvenile.—

173 (1) A child 14 years of age or older ~~of any age~~ who is
174 charged with a violation of state law punishable by death or by

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175 life imprisonment is subject to the jurisdiction of the court as
176 set forth in s. 985.0301(2) unless and until an indictment on
177 the charge is returned by the grand jury. When such indictment
178 is returned, the petition for delinquency, if any, must be
179 dismissed and the child must be tried and handled in every
180 respect as an adult:

181 (a) On the indictable offense punishable by death or by
182 life imprisonment; and

183 (b) On all other felonies or misdemeanors charged in the
184 indictment which are based on the same act or transaction as the
185 indictable offense punishable by death or by life imprisonment
186 or on one or more acts or transactions connected with the
187 offense punishable by death or by life imprisonment.

188 (2) An adjudicatory hearing may not be held until 21 days
189 after the child is taken into custody and charged with having
190 committed an indictable offense punishable by death or by life
191 imprisonment, unless the state attorney advises the court in
192 writing that he or she does not intend to present the case to
193 the grand jury, or has presented the case to the grand jury and
194 the grand jury has not returned an indictment. If the court
195 receives such a notice from the state attorney, or if the grand
196 jury fails to act within the 21-day period, the court may
197 proceed as otherwise authorized under this part.

198 (3) Notwithstanding any other law, a child who commits an
199 offense for which he or she may be indicted and who has a
200 pending competency hearing in juvenile court or who previously
201 has been found to be incompetent and has not been restored to
202 competency by a court may not be transferred to adult court for
203 criminal prosecution until the child's competency is restored. A

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204 pending competency hearing or a finding of incompetency tolls
205 the time limits in subsection (2). If the child is found to have
206 committed the offense punishable by death or by life
207 imprisonment, the child may ~~shall~~ be sentenced pursuant to s.
208 985.565 ~~as an adult~~. If the juvenile is not found to have
209 committed the indictable offense but is found to have committed
210 a lesser included offense or any other offense for which he or
211 she was indicted as a part of the criminal episode, the court
212 may sentence under s. 985.565.

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

219 (b) If ~~When~~ a child has been indicted pursuant to this
220 section, the court must ~~shall~~ immediately transfer and certify
221 to the adult circuit court all felony cases pertaining to the
222 child, for prosecution of the child as an adult, which have not
223 yet resulted in a plea of guilty or nolo contendere or in which
224 a finding of guilt has not been made. If the child is acquitted
225 of all charged offenses or lesser included offenses contained in
226 the indictment case, all felony cases that were transferred to
227 adult court pursuant to this paragraph must ~~shall~~ be subject to
228 the same penalties such cases were subject to before being
229 transferred to adult court.

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

232 985.03 Definitions.—As used in this chapter, the term:

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233 (54) "Waiver hearing" means a hearing provided for under s.
234 985.556(3) ~~s. 985.556(4)~~.

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

237 985.565 Sentencing powers; procedures; alternatives for
238 juveniles prosecuted as adults.—

239 (4) SENTENCING ALTERNATIVES.—

240 (a) *Adult sanctions*.—

241 1. Cases prosecuted on indictment.—If the child is found to
242 have committed the offense punishable by death or life
243 imprisonment, the child shall be sentenced as an adult. If the
244 juvenile is not found to have committed the indictable offense
245 but is found to have committed a lesser included offense or any
246 other offense for which he or she was indicted as a part of the
247 criminal episode, the court may sentence as follows:

248 a. As an adult;

249 b. Under chapter 958; or

250 c. As a juvenile under this section.

251 2. Other cases.—If a child who has been transferred for
252 criminal prosecution pursuant to information or waiver of
253 juvenile court jurisdiction is found to have committed a
254 violation of state law or a lesser included offense for which he
255 or she was charged as a part of the criminal episode, the court
256 may sentence as follows:

257 a. As an adult;

258 b. Under chapter 958; or

259 c. As a juvenile under this section.

260 3. ~~Notwithstanding any other provision to the contrary, if~~
261 ~~the state attorney is required to file a motion to transfer and~~

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262 ~~certify the juvenile for prosecution as an adult under s.~~
263 ~~985.556(3) and that motion is granted, the court must impose~~
264 ~~adult sanctions.~~

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

269 ~~4.5.~~ When a child has been transferred for criminal
270 prosecution as an adult and has been found to have committed a
271 violation of state law, the disposition of the case may include
272 the enforcement of any restitution ordered in any juvenile
273 proceeding.

274 (b) *Juvenile sanctions.*—For juveniles transferred to adult
275 court ~~but who do not qualify for such transfer under s.~~
276 ~~985.556(3)~~, the court may impose juvenile sanctions under this
277 paragraph. If juvenile sentences are imposed, the court shall,
278 under this paragraph, adjudge the child to have committed a
279 delinquent act. Adjudication of delinquency may not be deemed a
280 conviction, nor shall it operate to impose any of the civil
281 disabilities ordinarily resulting from a conviction. The court
282 shall impose an adult sanction or a juvenile sanction and may
283 not sentence the child to a combination of adult and juvenile
284 punishments. An adult sanction or a juvenile sanction may
285 include enforcement of an order of restitution or probation
286 previously ordered in any juvenile proceeding. However, if the
287 court imposes a juvenile sanction and the department determines
288 that the sanction is unsuitable for the child, the department
289 shall return custody of the child to the sentencing court for
290 further proceedings, including the imposition of adult

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291 sanctions. Upon adjudicating a child delinquent under subsection
292 (1), the court may:

293 1. Place the child in a probation program under the
294 supervision of the department for an indeterminate period of
295 time until the child reaches the age of 19 years or sooner if
296 discharged by order of the court.

297 2. Commit the child to the department for treatment in an
298 appropriate program for children for an indeterminate period of
299 time until the child is 21 or sooner if discharged by the
300 department. The department shall notify the court of its intent
301 to discharge no later than 14 days before discharge. Failure of
302 the court to timely respond to the department's notice shall be
303 considered approval for discharge.

304 3. Order disposition under ss. 985.435, 985.437, 985.439,
305 985.441, 985.45, and 985.455 as an alternative to youthful
306 offender or adult sentencing if the court determines not to
307 impose youthful offender or adult sanctions.

308

309 It is the intent of the Legislature that the criteria and
310 guidelines in this subsection are mandatory and that a
311 determination of disposition under this subsection is subject to
312 the right of the child to appellate review under s. 985.534.

313 Section 6. For the purpose of incorporating the amendment
314 made by this act to section 985.556, Florida Statutes, in a
315 reference thereto, subsection (1) of section 985.15, Florida
316 Statutes, is reenacted to read:

317 985.15 Filing decisions.—

318 (1) The state attorney may in all cases take action
319 independent of the action or lack of action of the juvenile

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320 probation officer and shall determine the action that is in the
321 best interest of the public and the child. If the child meets
322 the criteria requiring prosecution as an adult under s. 985.556,
323 the state attorney shall request the court to transfer and
324 certify the child for prosecution as an adult or shall provide
325 written reasons to the court for not making such a request. In
326 all other cases, the state attorney may:

- 327 (a) File a petition for dependency;
328 (b) File a petition under chapter 984;
329 (c) File a petition for delinquency;
330 (d) File a petition for delinquency with a motion to
331 transfer and certify the child for prosecution as an adult;
332 (e) File an information under s. 985.557;
333 (f) Refer the case to a grand jury;
334 (g) Refer the child to a diversionary, pretrial
335 intervention, arbitration, or mediation program, or to some
336 other treatment or care program if such program commitment is
337 voluntarily accepted by the child or the child's parents or
338 legal guardian; or
339 (h) Decline to file.

340 Section 7. For the purpose of incorporating the amendment
341 made by this act to section 985.556, Florida Statutes, in a
342 reference thereto, subsection (5) of section 985.265, Florida
343 Statutes, is reenacted to read:

344 985.265 Detention transfer and release; education; adult
345 jails.—

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

- 348 (a) When the child has been transferred or indicted for

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349 criminal prosecution as an adult under part X, except that the
350 court may not order or allow a child alleged to have committed a
351 misdemeanor who is being transferred for criminal prosecution
352 pursuant to either s. 985.556 or s. 985.557 to be detained or
353 held in a jail or other facility intended or used for the
354 detention of adults; however, such child may be held temporarily
355 in a detention facility; or

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

358

359 The child shall be housed separately from adult inmates to
360 prohibit a child from having regular contact with incarcerated
361 adults, including trustees. "Regular contact" means sight and
362 sound contact. Separation of children from adults shall permit
363 no more than haphazard or accidental contact. The receiving jail
364 or other facility shall contain a separate section for children
365 and shall have an adequate staff to supervise and monitor the
366 child's activities at all times. Supervision and monitoring of
367 children includes physical observation and documented checks by
368 jail or receiving facility supervisory personnel at intervals
369 not to exceed 10 minutes. This subsection does not prohibit
370 placing two or more children in the same cell. Under no
371 circumstances shall a child be placed in the same cell with an
372 adult.

373 Section 8. For the purpose of incorporating the amendment
374 made by this act to section 985.56, Florida Statutes, in a
375 reference thereto, paragraph (c) of subsection (2) of section
376 985.26, Florida Statutes, is reenacted to read:

377 985.26 Length of detention.-

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378 (2)

379 (c) A prolific juvenile offender under s. 985.255(1)(f)
380 shall be placed on supervised release detention care with
381 electronic monitoring or in secure detention care under a
382 special detention order until disposition. If secure detention
383 care is ordered by the court, it must be authorized under this
384 part and may not exceed:

385 1. Twenty-one days unless an adjudicatory hearing for the
386 case has been commenced in good faith by the court or the period
387 is extended by the court pursuant to paragraph (b); or

388 2. Fifteen days after the entry of an order of
389 adjudication.

390

391 As used in this paragraph, the term "disposition" means a
392 declination to file under s. 985.15(1)(h), the entry of nolle
393 prosequi for the charges, the filing of an indictment under s.
394 985.56 or an information under s. 985.557, a dismissal of the
395 case, or an order of final disposition by the court.

396 Section 9. This act shall take effect July 1, 2020.