

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

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32 Section 1. Subsection (5) of section 985.265, Florida
33 Statutes, is amended to read

34 985.265 Detention transfer and release; education; adult
35 jails.—

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

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

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

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

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

54
55 The child shall be housed separately from adult inmates to
56 prohibit a child from having regular contact with incarcerated
57 adults, including trustees. "Regular contact" means sight and
58 sound contact. Separation of children from adults shall permit

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

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

71 985.557 Direct filing of an information; discretionary
72 criteria.—

73 (1) DISCRETIONARY DIRECT FILE.—

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

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

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88 8. Murder.†89 9. Manslaughter.†90 10. Unlawful throwing, placing, or discharging of a
91 destructive device or bomb.†92 11. Armed burglary in violation of s. 810.02(2)(b), ~~or~~
93 specified burglary of a dwelling or structure in violation of s.
94 810.02(2)(c), or burglary with an assault or battery in
95 violation of s. 810.02(2)(a).†96 12. Aggravated battery.†97 13. Any lewd or lascivious offense committed upon or in the
98 presence of a person less than 16 years of age.†99 14. Carrying, displaying, using, threatening, or attempting
100 to use a weapon or firearm during the commission of a felony.†101 15. Grand theft in violation of s. 812.014(2)(a).†102 16. Possessing or discharging any weapon or firearm on
103 school property in violation of s. 790.115.†104 17. Home invasion robbery.†105 18. Carjacking.~~†~~~~or~~106 19. Grand theft of a motor vehicle in violation of s.
107 812.014(2)(c)6. or grand theft of a motor vehicle valued at
108 \$20,000 or more in violation of s. 812.014(2)(b) if the child
109 has a previous adjudication for grand theft of a motor vehicle
110 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).111 (b) With respect to any child who was 16 or 17 years of age
112 at the time the alleged offense was committed, the state
113 attorney may file an information when ~~in the state attorney's~~
114 ~~judgment and discretion~~ the public interest requires that adult
115 sanctions be considered or imposed. However, the state attorney
116 may not file an information on a child charged with a

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117 misdemeanor, unless the child has had at least two previous
118 adjudications ~~or adjudications withheld~~ for delinquent acts, one
119 of which involved an offense classified as a felony under state
120 law.

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

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

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

139 1. Evaluations and assessments completed by the department.

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

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

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

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

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

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

152 b. Prior periods of probation.

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

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

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

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

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

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

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

174 c. Whether the alleged offense is alleged to have been

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175 committed in an aggressive, violent, or premeditated manner.

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

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

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

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

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

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

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

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

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

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204 may examine these reports and, at the hearing, question the
205 parties responsible for creating them.

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

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

215 (4) ~~(2)~~ EFFECT OF DIRECT FILE.—

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

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

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233 court.

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

239 (5)~~(3)~~ CHARGES INCLUDED ON INFORMATION.—An information
240 filed pursuant to this section may include all charges that are
241 based on the same act, criminal episode, or transaction as the
242 primary offenses.

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

247 985.556 Waiver of juvenile court jurisdiction; hearing.—

248 (3) INVOLUNTARY MANDATORY WAIVER.—

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

258 (b) If the child was 14 years of age or older at the time
259 of commission of a fourth or subsequent alleged felony offense
260 and the child was previously adjudicated delinquent or had
261 adjudication withheld for or was found to have committed, or to

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

266

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

274 Section 4. This act shall take effect July 1, 2021.