

By Senator Powell

30-00642-21

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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 must either request a court to
5 transfer and certify children of certain ages who
6 commit specified crimes for prosecution as adults or
7 provide written reasons to the court for not making
8 such a request, or must 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 of a child to adult court for criminal prosecution of
19 an indictable offense until the child's competency has
20 been restored, if the child has a pending competency
21 hearing or previously has been found incompetent and
22 has not been restored to competency by a court;
23 providing for the tolling of certain time limits;
24 authorizing, rather than requiring, a child who is
25 found to have committed specified crimes to 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 s. 985.265(5), F.S.,

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30 relating to detention transfer and release, education,
31 and adult jails, to incorporate the amendments made to
32 ss. 985.556 and 985.557, F.S., in references thereto;
33 reenacting s. 985.15(1), F.S., relating to filing
34 decisions, to incorporate the amendments made to ss.
35 985.556 and 985.557, F.S., in references thereto;
36 reenacting s. 985.26(2)(c), F.S., relating to the
37 length of detention, to incorporate the amendments
38 made to ss. 985.557 and 985.56, F.S., in references
39 thereto; providing an effective date.
40

41 Be It Enacted by the Legislature of the State of Florida:
42

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

46 985.556 Waiver of juvenile court jurisdiction; hearing.—

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

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59 (2) INVOLUNTARY DISCRETIONARY WAIVER. ~~Except as provided in~~
60 ~~subsection (3),~~ The state attorney may file a motion requesting
61 the court to transfer the child for criminal prosecution if the
62 child was 14 years of age or older at the time the alleged
63 delinquent act or violation of law was committed.

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

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

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

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

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88 ~~certifying the case for trial as if the child were an adult or~~
89 ~~provide written reasons for not issuing such an order.~~

90 Section 2. Section 985.557, Florida Statutes, is amended to
91 read:

92 985.557 Prosecuting children as adults ~~Direct filing of an~~
93 ~~information;~~ discretionary criteria.—

94 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~
95 ~~FILE.~~—

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

103 ~~1. Arson;~~

104 ~~2. Sexual battery;~~

105 ~~3. Robbery;~~

106 ~~4. Kidnapping;~~

107 ~~5. Aggravated child abuse;~~

108 ~~6. Aggravated assault;~~

109 ~~7. Aggravated stalking;~~

110 ~~8. Murder;~~

111 ~~9. Manslaughter;~~

112 ~~10. Unlawful throwing, placing, or discharging of a~~
113 ~~destructive device or bomb;~~

114 ~~11. Armed burglary in violation of s. 810.02(2)(b) or~~
115 ~~specified burglary of a dwelling or structure in violation of s.~~
116 ~~810.02(2)(c), or burglary with an assault or battery in~~

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117 ~~violation of s. 810.02(2)(a);~~

118 ~~12. Aggravated battery;~~

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

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

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

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

126 ~~17. Home invasion robbery;~~

127 ~~18. Carjacking; or~~

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

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

143 (2) EFFECT OF PROSECUTION OF CHILDREN AS ADULTS DIRECT
 144 FILE.—

145 (a) Once a child has been transferred for criminal

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146 prosecution pursuant to an information and has been found to
147 have committed the presenting offense or a lesser included
148 offense, the child shall be handled thereafter in every respect
149 as if an adult for any subsequent violation of state law, unless
150 the court imposes juvenile sanctions under s. 985.565.

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

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

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

172 Section 3. Section 985.56, Florida Statutes, is amended to
173 read:

174 985.56 Indictment of a juvenile.—

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175 (1) A child 14 years of age or older ~~of any age~~ who is
176 charged with a violation of state law punishable by death or by
177 life imprisonment is subject to the jurisdiction of the court as
178 set forth in s. 985.0301(2) unless and until an indictment on
179 the charge is returned by the grand jury. When such indictment
180 is returned, the petition for delinquency, if any, must be
181 dismissed and the child must be tried and handled in every
182 respect as an adult:

183 (a) On the indictable offense punishable by death or by
184 life imprisonment; and

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

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

200 (3) Notwithstanding any other law, a child who commits an
201 offense for which he or she may be indicted and who has a
202 pending competency hearing in juvenile court or who previously
203 has been found to be incompetent and has not been restored to

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

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

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

232 Section 4. Subsection (54) of section 985.03, Florida

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233 Statutes, is amended to read:

234 985.03 Definitions.—As used in this chapter, the term:

235 (54) "Waiver hearing" means a hearing provided for under s.
236 985.556(3) ~~s. 985.556(4)~~.

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

239 985.565 Sentencing powers; procedures; alternatives for
240 juveniles prosecuted as adults.—

241 (4) SENTENCING ALTERNATIVES.—

242 (a) *Adult sanctions*.—

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

250 a. As an adult;

251 b. Under chapter 958; or

252 c. As a juvenile under this section.

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

259 a. As an adult;

260 b. Under chapter 958; or

261 c. As a juvenile under this section.

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262 3. ~~Notwithstanding any other provision to the contrary, if~~
263 ~~the state attorney is required to file a motion to transfer and~~
264 ~~certify the juvenile for prosecution as an adult under s.~~
265 ~~985.556(3) and that motion is granted, the court must impose~~
266 ~~adult sanctions.~~

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

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

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

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291 shall return custody of the child to the sentencing court for
292 further proceedings, including the imposition of adult
293 sanctions. Upon adjudicating a child delinquent under subsection
294 (1), the court may:

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

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

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

310

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

315 Section 6. For the purpose of incorporating the amendments
316 made by this act to sections 985.556 and 985.557, Florida
317 Statutes, in references thereto, subsection (5) of section
318 985.265, Florida Statutes, is reenacted to read:

319 985.265 Detention transfer and release; education; adult

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320 jails.-

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

323 (a) When the child has been transferred or indicted for
324 criminal prosecution as an adult under part X, except that the
325 court may not order or allow a child alleged to have committed a
326 misdemeanor who is being transferred for criminal prosecution
327 pursuant to either s. 985.556 or s. 985.557 to be detained or
328 held in a jail or other facility intended or used for the
329 detention of adults; however, such child may be held temporarily
330 in a detention facility; or

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

333

334 The child shall be housed separately from adult inmates to
335 prohibit a child from having regular contact with incarcerated
336 adults, including trustees. "Regular contact" means sight and
337 sound contact. Separation of children from adults shall permit
338 no more than haphazard or accidental contact. The receiving jail
339 or other facility shall contain a separate section for children
340 and shall have an adequate staff to supervise and monitor the
341 child's activities at all times. Supervision and monitoring of
342 children includes physical observation and documented checks by
343 jail or receiving facility supervisory personnel at intervals
344 not to exceed 10 minutes. This subsection does not prohibit
345 placing two or more children in the same cell. Under no
346 circumstances shall a child be placed in the same cell with an
347 adult.

348 Section 7. For the purpose of incorporating the amendments

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349 made by this act to sections 985.556 and 985.557, Florida
350 Statutes, in references thereto, subsection (1) of section
351 985.15, Florida Statutes, is reenacted to read:

352 985.15 Filing decisions.—

353 (1) The state attorney may in all cases take action
354 independent of the action or lack of action of the juvenile
355 probation officer and shall determine the action that is in the
356 best interest of the public and the child. If the child meets
357 the criteria requiring prosecution as an adult under s. 985.556,
358 the state attorney shall request the court to transfer and
359 certify the child for prosecution as an adult or shall provide
360 written reasons to the court for not making such a request. In
361 all other cases, the state attorney may:

362 (a) File a petition for dependency;

363 (b) File a petition under chapter 984;

364 (c) File a petition for delinquency;

365 (d) File a petition for delinquency with a motion to
366 transfer and certify the child for prosecution as an adult;

367 (e) File an information under s. 985.557;

368 (f) Refer the case to a grand jury;

369 (g) Refer the child to a diversionary, pretrial
370 intervention, arbitration, or mediation program, or to some
371 other treatment or care program if such program commitment is
372 voluntarily accepted by the child or the child's parents or
373 legal guardian; or

374 (h) Decline to file.

375 Section 8. For the purpose of incorporating the amendments
376 made by this act to sections 985.557 and 985.56, Florida
377 Statutes, in references thereto, paragraph (c) of subsection (2)

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378 of section 985.26, Florida Statutes, is reenacted to read:

379 985.26 Length of detention.—

380 (2)

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

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

390 2. Fifteen days after the entry of an order of
391 adjudication.

392

393 As used in this paragraph, the term "disposition" means a
394 declination to file under s. 985.15(1)(h), the entry of nolle
395 prosequi for the charges, the filing of an indictment under s.
396 985.56 or an information under s. 985.557, a dismissal of the
397 case, or an order of final disposition by the court.

398 Section 9. This act shall take effect July 1, 2021.