

By the Committee on Criminal Justice; and Senators Powell and Farmer

591-02932A-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.  
27 985.565, F.S.; authorizing, rather than requiring, a  
28 child to be sentenced as an adult if the child is  
29 found to have committed an offense punishable by death

591-02932A-21

2021640c1

30 or life imprisonment; conforming provisions to changes  
31 made by the act; amending s. 985.03, F.S.; conforming  
32 a cross-reference; reenacting s. 985.265(5), F.S.,  
33 relating to detention transfer and release, education,  
34 and adult jails, to incorporate the amendments made to  
35 ss. 985.556 and 985.557, F.S., in references thereto;  
36 reenacting s. 985.15(1), F.S., relating to filing  
37 decisions, to incorporate the amendments made to ss.  
38 985.556 and 985.557, F.S., in references thereto;  
39 reenacting s. 985.26(2)(c), F.S., relating to the  
40 length of detention, to incorporate the amendments  
41 made to ss. 985.557 and 985.56, F.S., in references  
42 thereto; providing an effective date.

43  
44 Be It Enacted by the Legislature of the State of Florida:

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

49 985.556 Waiver of juvenile court jurisdiction; hearing.—

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

591-02932A-21

2021640c1

59 offense, the child shall be handled thereafter in every respect  
60 as an adult for any subsequent violation of state law, unless  
61 the court imposes juvenile sanctions under s. 985.565(4)(b).

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

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

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

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

85  
86 ~~the state attorney shall request the court to transfer and~~  
87 ~~certify the child for prosecution as an adult or shall provide~~

591-02932A-21

2021640c1

88 ~~written reasons to the court for not making such request, or~~  
89 ~~proceed under s. 985.557(1). Upon the state attorney's request,~~  
90 ~~the court shall either enter an order transferring the case and~~  
91 ~~certifying the case for trial as if the child were an adult or~~  
92 ~~provide written reasons for not issuing such an order.~~

93 Section 2. Section 985.557, Florida Statutes, is amended to  
94 read:

95 985.557 Prosecuting children as adults ~~Direct filing of an~~  
96 ~~information; discretionary criteria.-~~

97 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~  
98 ~~FILE.-~~

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

106 1. ~~Arson;~~

107 2. ~~Sexual battery;~~

108 3. ~~Robbery;~~

109 4. ~~Kidnapping;~~

110 5. ~~Aggravated child abuse;~~

111 6. ~~Aggravated assault;~~

112 7. ~~Aggravated stalking;~~

113 8. ~~Murder;~~

114 9. ~~Manslaughter;~~

115 10. ~~Unlawful throwing, placing, or discharging of a~~  
116 ~~destructive device or bomb;~~

591-02932A-21

2021640c1

117 ~~11. Armed burglary in violation of s. 810.02(2)(b) or~~  
118 ~~specified burglary of a dwelling or structure in violation of s.~~  
119 ~~810.02(2)(c), or burglary with an assault or battery in~~  
120 ~~violation of s. 810.02(2)(a);~~

121 ~~12. Aggravated battery;~~

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

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

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

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

129 ~~17. Home invasion robbery;~~

130 ~~18. Carjacking; or~~

131 ~~19. Grand theft of a motor vehicle in violation of s.~~  
132 ~~812.014(2)(c)6. or grand theft of a motor vehicle valued at~~  
133 ~~\$20,000 or more in violation of s. 812.014(2)(b) if the child~~  
134 ~~has a previous adjudication for grand theft of a motor vehicle~~  
135 ~~in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).~~

136 ~~(b)~~ With respect to any child who was 16 or 17 years of age  
137 at the time the alleged forcible felony, as defined in s.  
138 776.08, offense was committed, the state attorney may file an  
139 information when in the state attorney's judgment and discretion  
140 the public interest requires that adult sanctions be considered  
141 or imposed. However, the state attorney may not file an  
142 information on a child charged with a misdemeanor, unless the  
143 child has had at least two previous adjudications or  
144 adjudications withheld for delinquent acts, one of which  
145 involved an offense classified as a forcible felony under state

591-02932A-21

2021640c1

146 law.

147 (2) EFFECT OF PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~  
148 ~~FILE.~~—

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

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

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

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

591-02932A-21

2021640c1

175 offenses.

176 Section 3. Section 985.56, Florida Statutes, is amended to  
177 read:

178 985.56 Indictment of a juvenile.—

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

187 (a) On the indictable offense punishable by death or by  
188 life imprisonment; and

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

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

591-02932A-21

2021640c1

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

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

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



591-02932A-21

2021640c1

233 adult court pursuant to this paragraph must ~~shall~~ be subject to  
234 the same penalties such cases were subject to before being  
235 transferred to adult court.

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

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

240 (4) SENTENCING ALTERNATIVES.—

241 (a) *Adult sanctions*.—

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

249 a. As an adult;

250 b. Under chapter 958; or

251 c. As a juvenile under this section.

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

258 a. As an adult;

259 b. Under chapter 958; or

260 c. As a juvenile under this section.

261 3. ~~Notwithstanding any other provision to the contrary, if~~

591-02932A-21

2021640c1

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

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

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

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

591-02932A-21

2021640c1

291 further proceedings, including the imposition of adult  
292 sanctions. Upon adjudicating a child delinquent under subsection  
293 (1), the court may:

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

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

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

309

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

314 Section 5. Subsection (54) of section 985.03, Florida  
315 Statutes, is amended to read:

316 985.03 Definitions.—As used in this chapter, the term:

317 (54) "Waiver hearing" means a hearing provided for under s.  
318 985.556(3) ~~s. 985.556(4)~~.

319 Section 6. For the purpose of incorporating the amendments

591-02932A-21

2021640c1

320 made by this act to sections 985.556 and 985.557, Florida  
321 Statutes, in references thereto, subsection (5) of section  
322 985.265, Florida Statutes, is reenacted to read:

323 985.265 Detention transfer and release; education; adult  
324 jails.—

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

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

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

337

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

591-02932A-21

2021640c1

349 placing two or more children in the same cell. Under no  
350 circumstances shall a child be placed in the same cell with an  
351 adult.

352 Section 7. For the purpose of incorporating the amendments  
353 made by this act to sections 985.556 and 985.557, Florida  
354 Statutes, in references thereto, subsection (1) of section  
355 985.15, Florida Statutes, is reenacted to read:

356 985.15 Filing decisions.—

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

366 (a) File a petition for dependency;

367 (b) File a petition under chapter 984;

368 (c) File a petition for delinquency;

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

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

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

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

591-02932A-21

2021640c1

378 (h) Decline to file.

379 Section 8. For the purpose of incorporating the amendments  
380 made by this act to sections 985.557 and 985.56, Florida  
381 Statutes, in references thereto, paragraph (c) of subsection (2)  
382 of section 985.26, Florida Statutes, is reenacted to read:

383 985.26 Length of detention.—

384 (2)

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

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

394 2. Fifteen days after the entry of an order of  
395 adjudication.

396

397 As used in this paragraph, the term "disposition" means a  
398 declination to file under s. 985.15(1)(h), the entry of nolle  
399 prosequi for the charges, the filing of an indictment under s.  
400 985.56 or an information under s. 985.557, a dismissal of the  
401 case, or an order of final disposition by the court.

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