

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.; removing 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; providing an effective date.

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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 before 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

51 wanted by another jurisdiction for prosecution as an adult.

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53 The child shall be housed separately from adult inmates to
54 prohibit a child from having regular contact with incarcerated
55 adults, including trusties. "Regular contact" means sight and
56 sound contact. Separation of children from adults shall permit
57 no more than haphazard or accidental contact. The receiving jail
58 or other facility shall contain a separate section for children
59 and shall have an adequate staff to supervise and monitor the
60 child's activities at all times. Supervision and monitoring of
61 children includes physical observation and documented checks by
62 jail or receiving facility supervisory personnel at intervals
63 not to exceed 10 minutes. This subsection does not prohibit
64 placing two or more children in the same cell. Under no
65 circumstances shall a child be placed in the same cell with an
66 adult.

67 Section 2. Section 985.557, Florida Statutes, is amended
68 to read:

69 985.557 Direct filing of an information; discretionary
70 criteria.—

71 (1) DISCRETIONARY DIRECT FILE.—

72 (a) With respect to any child who was 14 or 15 years of
73 age at the time the alleged offense was committed, the state
74 attorney may file an information when ~~in the state attorney's~~
75 ~~judgment and discretion~~ the public interest requires that adult

76 | sanctions be considered or imposed and when the offense charged
 77 | is for the commission of, or attempt to commit, any of the
 78 | following, ~~or conspiracy to commit:~~

- 79 | 1. Arson.†
- 80 | 2. Sexual battery.†
- 81 | 3. Robbery.†
- 82 | 4. Kidnapping.†
- 83 | 5. Aggravated child abuse.†
- 84 | 6. Aggravated assault.†
- 85 | 7. Aggravated stalking.†
- 86 | 8. Murder.†
- 87 | 9. Manslaughter.†
- 88 | 10. Unlawful throwing, placing, or discharging of a
 89 | destructive device or bomb.†
- 90 | 11. Armed burglary in violation of s. 810.02(2)(b) ‡ ~~or~~
 91 | specified burglary of a dwelling or structure in violation of s.
 92 | 810.02(2)(c), or burglary with an assault or battery in
 93 | violation of s. 810.02(2)(a) ‡
- 94 | 12. Aggravated battery.†
- 95 | 13. Any lewd or lascivious offense committed upon or in
 96 | the presence of a person less than 16 years of age.†
- 97 | 14. Carrying, displaying, using, threatening, or
 98 | attempting to use a weapon or firearm during the commission of a
 99 | felony.†
- 100 | 15. Grand theft in violation of s. 812.014(2)(a) ‡

101 16. Possessing or discharging any weapon or firearm on
102 school property in violation of s. 790.115.~~†~~

103 17. Home invasion robbery.~~†~~

104 18. Carjacking.~~†~~~~or~~

105 19. Grand theft of a motor vehicle in violation of s.
106 812.014(2)(c)6. or grand theft of a motor vehicle valued at
107 \$20,000 or more in violation of s. 812.014(2)(b) if the child
108 has a previous adjudication for grand theft of a motor vehicle
109 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

110 (b) With respect to any child who was 16 or 17 years of
111 age at the time the alleged offense was committed, the state
112 attorney may file an information when ~~in the state attorney's~~
113 ~~judgment and discretion~~ the public interest requires that adult
114 sanctions be considered or imposed. However, the state attorney
115 may not file an information on a child charged with a
116 misdemeanor, unless the child has had at least two previous
117 adjudications ~~or adjudications withheld~~ for delinquent acts, one
118 of which involved an offense classified as a felony under state
119 law.

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

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

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

138 1. Evaluations and assessments completed by the
 139 department.

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

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

154 b. Prior periods of probation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

199 (b) The judge may consider any reports that may assist the
200 court, including prior predisposition reports, psychosocial

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201 assessments, individual educational plans, developmental
202 assessments, school records, abuse or neglect reports, home
203 studies, protective investigations, and psychological and
204 psychiatric evaluations. The child, the child's parents or legal
205 guardians, his or her defense counsel, and the state attorney
206 may examine these reports and, at the hearing, question the
207 parties responsible for creating them.

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

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

217 (4)-(2) EFFECT OF DIRECT FILE.-

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

224 (b) When a child is transferred for criminal prosecution
225 as an adult, the court shall immediately transfer and certify to

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

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

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

245 Section 3. This act shall take effect July 1, 2022.