

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. 985.265, F.S.; prohibiting a jail or other
4 facility intended or used for the detention of adults
5 from holding a child who has been transferred to adult
6 court for criminal prosecution before a specified
7 hearing to determine if the child should be prosecuted
8 as an adult, unless the child waives his or her right
9 to such hearing; amending s. 985.556, F.S.; deleting
10 provisions requiring a state attorney to request a
11 court to transfer and certify a child for prosecution
12 as an adult or to provide written reasons to the court
13 for not making such request, or to proceed under
14 specified provision; amending s. 985.557, F.S.;
15 deleting references to the state attorney's discretion
16 to direct file a juvenile; revising discretionary
17 direct file criteria; requiring a court to advise a
18 child and his or her parent or guardian of the child's
19 right to a certain due process evidentiary hearing
20 upon a state attorney filing an information
21 transferring a child to adult court; requiring that
22 the child or the child's parent or guardian receive a
23 due process evidentiary hearing; requiring the judge
24 to conduct the hearing within a certain timeframe;
25 requiring a judge to consider specified information
26 and factors; authorizing a judge to consider certain
27 reports; providing for continued jurisdiction with
28 regard to the child; providing an exception; requiring
29 the adult court to render an order that includes

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30 certain findings; authorizing review of the order;
31 amending ss. 985.15 and 985.565, F.S.; conforming
32 provisions to changes made by the act; amending s.
33 985.03, F.S.; conforming a cross-reference; providing
34 an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Subsection (5) of section 985.265, Florida
39 Statutes, is amended to read:

40 985.265 Detention transfer and release; education; adult
41 jails.—

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

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

46 1. The court may not order or allow a child alleged to have
47 committed a misdemeanor who is being transferred for criminal
48 prosecution pursuant to either s. 985.556 or s. 985.557 to be
49 detained or held in a jail or other facility intended or used
50 for the detention of adults; however, such child may be held
51 temporarily in a detention facility; and

52 2. A child who has been transferred for criminal
53 prosecution as an adult pursuant to s. 985.557 may not be held
54 in a jail or other facility intended or used for the detention
55 of adults before a court finding, as a result of a hearing
56 provided for under s. 985.557(3), that the child should be
57 prosecuted as an adult, unless the child waives his or her right
58 to such hearing; or

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

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

76 Section 2. Subsections (2) and (3) of section 985.556,
77 Florida Statutes, are amended to read:

78 985.556 Waiver of juvenile court jurisdiction; hearing.—

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

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

85 ~~(a) If the child was 14 years of age or older, and if the~~
86 ~~child has been previously adjudicated delinquent for an act~~
87 ~~classified as a felony, which adjudication was for the~~

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88 ~~commission of, attempt to commit, or conspiracy to commit~~
89 ~~murder, sexual battery, armed or strong-armed robbery,~~
90 ~~earjacking, home-invasion robbery, aggravated battery,~~
91 ~~aggravated assault, or burglary with an assault or battery, and~~
92 ~~the child is currently charged with a second or subsequent~~
93 ~~violent crime against a person; or~~

94 ~~(b) If the child was 14 years of age or older at the time~~
95 ~~of commission of a fourth or subsequent alleged felony offense~~
96 ~~and the child was previously adjudicated delinquent or had~~
97 ~~adjudication withheld for or was found to have committed, or to~~
98 ~~have attempted or conspired to commit, three offenses that are~~
99 ~~felony offenses if committed by an adult, and one or more of~~
100 ~~such felony offenses involved the use or possession of a firearm~~
101 ~~or violence against a person;~~

102
103 ~~the state attorney shall request the court to transfer and~~
104 ~~certify the child for prosecution as an adult or shall provide~~
105 ~~written reasons to the court for not making such request, or~~
106 ~~proceed under s. 985.557(1). Upon the state attorney's request,~~
107 ~~the court shall either enter an order transferring the case and~~
108 ~~certifying the case for trial as if the child were an adult or~~
109 ~~provide written reasons for not issuing such an order.~~

110 Section 3. Section 985.557, Florida Statutes, is amended to
111 read:

112 985.557 Prosecuting children as adults ~~Direct filing of an~~
113 ~~information; discretionary criteria.-~~

114 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~
115 ~~FILE.-~~

116 ~~(a) With respect to any child who was 14 or 15 years of age~~

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117 ~~at the time the alleged offense was committed, the state~~
118 ~~attorney may file an information when in the state attorney's~~
119 ~~judgment and discretion the public interest requires that adult~~
120 ~~sanctions be considered or imposed and when the offense charged~~
121 ~~is for the commission of, attempt to commit, or conspiracy to~~
122 ~~commit:~~

- 123 ~~1. Arson;~~
- 124 ~~2. Sexual battery;~~
- 125 ~~3. Robbery;~~
- 126 ~~4. Kidnapping;~~
- 127 ~~5. Aggravated child abuse;~~
- 128 ~~6. Aggravated assault;~~
- 129 ~~7. Aggravated stalking;~~
- 130 ~~8. Murder;~~
- 131 ~~9. Manslaughter;~~
- 132 ~~10. Unlawful throwing, placing, or discharging of a~~
133 ~~destructive device or bomb;~~
- 134 ~~11. Armed burglary in violation of s. 810.02(2)(b) or~~
135 ~~specified burglary of a dwelling or structure in violation of s.~~
136 ~~810.02(2)(c), or burglary with an assault or battery in~~
137 ~~violation of s. 810.02(2)(a);~~
- 138 ~~12. Aggravated battery;~~
- 139 ~~13. Any lewd or lascivious offense committed upon or in the~~
140 ~~presence of a person less than 16 years of age;~~
- 141 ~~14. Carrying, displaying, using, threatening, or attempting~~
142 ~~to use a weapon or firearm during the commission of a felony;~~
- 143 ~~15. Grand theft in violation of s. 812.014(2)(a);~~
- 144 ~~16. Possessing or discharging any weapon or firearm on~~
145 ~~school property in violation of s. 790.115;~~

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146 ~~17. Home invasion robbery;~~

147 ~~18. Carjacking; or~~

148 ~~19. Grand theft of a motor vehicle in violation of s.~~
149 ~~812.014(2)(c)6. or grand theft of a motor vehicle valued at~~
150 ~~\$20,000 or more in violation of s. 812.014(2)(b) if the child~~
151 ~~has a previous adjudication for grand theft of a motor vehicle~~
152 ~~in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).~~

153 ~~(b)~~ With respect to any child who was 16 or 17 years of age
154 at the time the alleged forcible felony, as defined in s.
155 776.08, offense was committed, the state attorney may file an
156 information when ~~in the state attorney's judgment and discretion~~
157 the public interest requires that adult sanctions be considered
158 or imposed. However, the state attorney may not file an
159 information on a child charged with a misdemeanor, unless the
160 child has had at least two previous adjudications ~~or~~
161 ~~adjudications withheld~~ for delinquent acts, one of which
162 involved an offense classified as a forcible felony as defined
163 in s. 776.08 under state law.

164 (2) NOTIFICATION TO PARENT OR GUARDIAN.—Upon a state
165 attorney filing an information transferring a child to adult
166 court, the court must advise the child and his or her parent or
167 guardian that the child has the right to a due process
168 evidentiary hearing before a judge.

169 (3) DUE PROCESS EVIDENTIARY HEARING BEFORE A JUDGE.—
170 Notwithstanding any other law, and in all cases, a child charged
171 with a crime or his or her parent or guardian must receive a due
172 process evidentiary hearing after the state attorney files an
173 information in adult court under this section.

174 (a) The judge shall conduct the hearing within 30 days

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175 after the request, excluding Saturdays, Sundays, and legal
176 holidays, unless the child or the child's attorney shows good
177 cause for a delay. The purpose of the hearing is for the court
178 to determine whether it is necessary for the community's
179 protection that the child be prosecuted in adult court. The
180 judge shall consider all of the following:

181 1. Evaluations and assessments completed by the department.

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

183 a. The effect, if any, of immaturity, impetuosity, or
184 failure to appreciate risks and consequences on the child's
185 participation in the alleged offense.

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

188 c. The effect, if any, of characteristics attributable to
189 the child's youth on his or her judgment.

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

191 a. Previous contacts with the department, the Department of
192 Corrections, the Department of Children and Families, other law
193 enforcement agencies, and the courts.

194 b. Prior periods of probation.

195 c. Prior adjudications that the child committed a
196 delinquent act or violation of law, with greater weight being
197 given if a court previously found that the child committed a
198 delinquent act or violation of law involving violence to
199 persons.

200 d. Prior commitments to institutions of the department, the
201 Department of Corrections, or agencies under contract with
202 either department.

203 e. Any history of trauma, abuse or neglect, foster care

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204 placements, failed adoption, fetal alcohol syndrome, exposure to
205 controlled substances at birth, or below-average intellectual
206 functioning.

207 f. Identification of the child as a student requiring
208 exceptional student education or having previously received
209 psychological services.

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

212 a. Whether the alleged offense is punishable by death or
213 life imprisonment.

214 b. Whether the alleged offense was against persons or
215 property.

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

218 d. The extent of the child's participation in the alleged
219 offense.

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

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

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

227 b. By the use of procedures, services, and facilities
228 currently available to the adult court, including whether the
229 lowest permissible sentence under the Criminal Punishment Code
230 is a nonstate prison sanction.

231 6. Whether the child could obtain habilitative or
232 rehabilitative services available in the juvenile justice

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233 system.

234 7. Whether the child could receive a sentence in juvenile
235 court which would provide adequate safety and protection for the
236 community.

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

239 (b) The judge may consider any reports that may assist the
240 court, including prior predisposition reports, psychosocial
241 assessments, individual educational plans, developmental
242 assessments, school records, abuse or neglect reports, home
243 studies, protective investigations, and psychological and
244 psychiatric evaluations. The child, the child's parents or legal
245 guardians, his or her defense counsel, and the state attorney
246 may examine these reports and, at the hearing, question the
247 parties responsible for creating them.

248 (c) The adult court shall retain jurisdiction unless the
249 court finds by a preponderance of the evidence that the factors
250 listed in paragraph (a) support returning the child to juvenile
251 court.

252 (d) The adult court shall render an order that includes
253 specific findings of fact and the reasons for its decision. The
254 prosecution or defense may seek immediate review of the order
255 through interlocutory appeal. The order shall be reviewable on
256 appeal under the Florida Rules of Appellate Procedure.

257 (4) ~~(2)~~ EFFECT OF PROSECUTING CHILDREN AS ADULTS DIRECT
258 FILE.—

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

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

265 (b) When a child is transferred for criminal prosecution as
266 an adult, the court shall immediately transfer and certify to
267 the adult circuit court all felony cases pertaining to the
268 child, for prosecution of the child as an adult, which have not
269 yet resulted in a plea of guilty or nolo contendere or in which
270 a finding of guilt has not been made. If a child is acquitted of
271 all charged offenses or lesser included offenses contained in
272 the original case transferred to adult court, all felony cases
273 that were transferred to adult court as a result of this
274 paragraph shall be subject to the same penalties to which such
275 cases would have been subject before being transferred to adult
276 court.

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

282 (5)~~(3)~~ CHARGES INCLUDED ON INFORMATION.—An information
283 filed pursuant to this section may include all charges that are
284 based on the same act, criminal episode, or transaction as the
285 primary offenses.

286 Section 4. Subsection (1) of section 985.15, Florida
287 Statutes, is amended to read:

288 985.15 Filing decisions.—

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

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291 probation officer and shall determine the action that is in the
292 best interest of the public and the child. ~~If the child meets~~
293 ~~the criteria requiring prosecution as an adult under s. 985.556,~~
294 ~~the state attorney shall request the court to transfer and~~
295 ~~certify the child for prosecution as an adult or shall provide~~
296 ~~written reasons to the court for not making such a request. In~~
297 ~~all other cases,~~ The state attorney may:

- 298 (a) File a petition for dependency;
299 (b) File a petition under chapter 984;
300 (c) File a petition for delinquency;
301 (d) File a petition for delinquency with a motion to
302 transfer and certify the child for prosecution as an adult;
303 (e) File an information under s. 985.557;
304 (f) Refer the case to a grand jury;
305 (g) Refer the child to a diversionary, pretrial
306 intervention, arbitration, or mediation program, or to some
307 other treatment or care program if such program commitment is
308 voluntarily accepted by the child or the child's parents or
309 legal guardian; or
310 (h) Decline to file.

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

313 985.565 Sentencing powers; procedures; alternatives for
314 juveniles prosecuted as adults.—

315 (4) SENTENCING ALTERNATIVES.—

316 (a) *Adult sanctions*.—

317 1. Cases prosecuted on indictment.—If the child is found to
318 have committed the offense punishable by death or life
319 imprisonment, the child shall be sentenced as an adult. If the

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320 juvenile is not found to have committed the indictable offense
321 but is found to have committed a lesser included offense or any
322 other offense for which he or she was indicted as a part of the
323 criminal episode, the court may sentence as follows:

324 a. As an adult;

325 b. Under chapter 958; or

326 c. As a juvenile under this section.

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

333 a. As an adult;

334 b. Under chapter 958; or

335 c. As a juvenile under this section.

336 ~~3. Notwithstanding any other provision to the contrary, if~~
337 ~~the state attorney is required to file a motion to transfer and~~
338 ~~certify the juvenile for prosecution as an adult under s.~~
339 ~~985.556(3) and that motion is granted, the court must impose~~
340 ~~adult sanctions.~~

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

345 4.5. When a child has been transferred for criminal
346 prosecution as an adult and has been found to have committed a
347 violation of state law, the disposition of the case may include
348 the enforcement of any restitution ordered in any juvenile

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349 proceeding.

350 (b) *Juvenile sanctions*.—For juveniles transferred to adult
351 court ~~but who do not qualify for such transfer under s.~~
352 ~~985.556(3)~~, the court may impose juvenile sanctions under this
353 paragraph. If juvenile sentences are imposed, the court shall,
354 under this paragraph, adjudge the child to have committed a
355 delinquent act. Adjudication of delinquency may not be deemed a
356 conviction, nor shall it operate to impose any of the civil
357 disabilities ordinarily resulting from a conviction. The court
358 shall impose an adult sanction or a juvenile sanction and may
359 not sentence the child to a combination of adult and juvenile
360 punishments. An adult sanction or a juvenile sanction may
361 include enforcement of an order of restitution or probation
362 previously ordered in any juvenile proceeding. However, if the
363 court imposes a juvenile sanction and the department determines
364 that the sanction is unsuitable for the child, the department
365 shall return custody of the child to the sentencing court for
366 further proceedings, including the imposition of adult
367 sanctions. Upon adjudicating a child delinquent under subsection
368 (1), the court may:

369 1. Place the child in a probation program under the
370 supervision of the department for an indeterminate period of
371 time until the child reaches the age of 19 years or sooner if
372 discharged by order of the court.

373 2. Commit the child to the department for treatment in an
374 appropriate program for children for an indeterminate period of
375 time until the child is 21 or sooner if discharged by the
376 department. The department shall notify the court of its intent
377 to discharge no later than 14 days before discharge. Failure of

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378 the court to timely respond to the department's notice shall be
379 considered approval for discharge.

380 3. Order disposition under ss. 985.435, 985.437, 985.439,
381 985.441, 985.45, and 985.455 as an alternative to youthful
382 offender or adult sentencing if the court determines not to
383 impose youthful offender or adult sanctions.

384

385 It is the intent of the Legislature that the criteria and
386 guidelines in this subsection are mandatory and that a
387 determination of disposition under this subsection is subject to
388 the right of the child to appellate review under s. 985.534.

389 Section 6. Subsection (54) of section 985.03, Florida
390 Statutes, is amended to read:

391 985.03 Definitions.—As used in this chapter, the term:

392 (54) "Waiver hearing" means a hearing provided for under s.
393 985.556(3) ~~s. 985.556(4)~~.

394 Section 7. This act shall take effect July 1, 2023.