

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 is held to determine if the child should be
8 prosecuted as an adult, unless the child waives his or
9 her right to such hearing; amending s. 985.556, F.S.;
10 deleting provisions requiring a state attorney to
11 request a court to transfer and certify a child for
12 prosecution as an adult or to provide written reasons
13 to the court for not making such request, or to
14 proceed under a specified provision; amending s.
15 985.557, F.S.; deleting references to the state
16 attorney's discretion to direct file a juvenile;
17 revising discretionary direct file criteria; requiring
18 a court to advise a child and his or her parent or
19 legal guardian of the child's right to a due process
20 evidentiary hearing before a judge upon the filing by
21 a state attorney of an information transferring the
22 child to adult court; requiring that the child or the
23 child's parent or legal guardian be afforded such
24 hearing; requiring the judge to conduct the hearing
25 within a certain timeframe; requiring the judge to
26 consider specified information and factors during such
27 hearing; authorizing the judge to consider, and
28 certain parties to the action to examine, certain
29 reports; providing for continued jurisdiction of the

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30 adult court with regard to the child unless the court
31 makes a specified finding by a preponderance of the
32 evidence; requiring the adult court to render an order
33 that includes certain findings of fact; authorizing
34 immediate review of the order; providing that the
35 order is reviewable on appeal under specified rules;
36 amending ss. 985.15 and 985.565, F.S.; conforming
37 provisions to changes made by the act; amending s.
38 985.03, F.S.; conforming a cross-reference; providing
39 an effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Subsection (5) of section 985.265, Florida
44 Statutes, is amended to read:

45 985.265 Detention transfer and release; education; adult
46 jails.-

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

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

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

57 2. A child who has been transferred for criminal
58 prosecution as an adult pursuant to s. 985.557 may not be held

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59 in a jail or other facility intended or used for the detention
60 of adults before a court finding, as a result of a hearing
61 provided for under s. 985.557(3), that the child should be
62 prosecuted as an adult, unless the child waives his or her right
63 to such hearing; or

64 (b) When a child taken into custody in this state is wanted
65 by another jurisdiction for prosecution as an adult.
66

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

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

83 985.556 Waiver of juvenile court jurisdiction; hearing.—

84 (2) INVOLUNTARY DISCRETIONARY WAIVER. ~~Except as provided in~~
85 ~~subsection (3),~~ The state attorney may file a motion requesting
86 the court to transfer the child for criminal prosecution if the
87 child was 14 years of age or older at the time the alleged

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88 delinquent act or violation of law was committed.

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

90 ~~(a) If the child was 14 years of age or older, and if the~~
91 ~~child has been previously adjudicated delinquent for an act~~
92 ~~classified as a felony, which adjudication was for the~~
93 ~~commission of, attempt to commit, or conspiracy to commit~~
94 ~~murder, sexual battery, armed or strong-armed robbery,~~
95 ~~earjacking, home-invasion robbery, aggravated battery,~~
96 ~~aggravated assault, or burglary with an assault or battery, and~~
97 ~~the child is currently charged with a second or subsequent~~
98 ~~violent crime against a person; or~~

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

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

115 Section 3. Section 985.557, Florida Statutes, is amended to
116 read:

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117 985.557 Prosecuting children as adults ~~Direct filing of an~~
118 ~~information; discretionary criteria.-~~

119 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~
120 ~~FILE.-~~

121 ~~(a) With respect to any child who was 14 or 15 years of age~~
122 ~~at the time the alleged offense was committed, the state~~
123 ~~attorney may file an information when in the state attorney's~~
124 ~~judgment and discretion the public interest requires that adult~~
125 ~~sanctions be considered or imposed and when the offense charged~~
126 ~~is for the commission of, attempt to commit, or conspiracy to~~
127 ~~commit:~~

128 1. ~~Arson;~~

129 2. ~~Sexual battery;~~

130 3. ~~Robbery;~~

131 4. ~~Kidnapping;~~

132 5. ~~Aggravated child abuse;~~

133 6. ~~Aggravated assault;~~

134 7. ~~Aggravated stalking;~~

135 8. ~~Murder;~~

136 9. ~~Manslaughter;~~

137 10. ~~Unlawful throwing, placing, or discharging of a~~
138 ~~destructive device or bomb;~~

139 11. ~~Armed burglary in violation of s. 810.02(2)(b) or~~
140 ~~specified burglary of a dwelling or structure in violation of s.~~
141 ~~810.02(2)(c), or burglary with an assault or battery in~~
142 ~~violation of s. 810.02(2)(a);~~

143 12. ~~Aggravated battery;~~

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

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

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

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

151 ~~17. Home invasion robbery;~~

152 ~~18. Carjacking; or~~

153 ~~19. Grand theft of a motor vehicle in violation of s.~~
 154 ~~812.014(2) (c)6. or grand theft of a motor vehicle valued at~~
 155 ~~\$20,000 or more in violation of s. 812.014(2) (b) if the child~~
 156 ~~has a previous adjudication for grand theft of a motor vehicle~~
 157 ~~in violation of s. 812.014(2) (c)6. or s. 812.014(2) (b).~~

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

169 (2) NOTIFICATION TO PARENT OR GUARDIAN.—Upon the filing by
 170 the state attorney of an information transferring a child to
 171 adult court, the court must advise the child and his or her
 172 parent or legal guardian that the child has the right to a due
 173 process evidentiary hearing before a judge.

174 (3) DUE PROCESS EVIDENTIARY HEARING.—Notwithstanding any

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175 other law, and in all cases, a child charged with a crime or his
176 or her parent or legal guardian must be afforded a due process
177 evidentiary hearing before a judge after the state attorney
178 files an information in adult court under this section.

179 (a) The judge shall conduct the hearing within 30 days
180 after the request, excluding Saturdays, Sundays, and legal
181 holidays, unless the child or the child's attorney shows good
182 cause for a delay. The purpose of the hearing is for the court
183 to determine whether it is necessary for the community's
184 protection that the child be prosecuted in adult court. The
185 judge shall consider all of the following:

186 1. Evaluations and assessments completed by the department.

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

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

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

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

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

196 a. Previous contacts with the department, the Department of
197 Corrections, the Department of Children and Families, other law
198 enforcement agencies, and the courts.

199 b. Prior periods of probation.

200 c. Prior adjudications that the child committed a
201 delinquent act or violation of law, with greater weight being
202 given if a court previously found that the child committed a
203 delinquent act or violation of law involving violence to

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204 persons.

205 d. Prior commitments to institutions of the department, the
206 Department of Corrections, or agencies under contract with
207 either department.

208 e. Any history of trauma, abuse or neglect, foster care
209 placements, failed adoption, fetal alcohol syndrome, exposure to
210 controlled substances at birth, or below-average intellectual
211 functioning.

212 f. Identification of the child as a student requiring
213 exceptional student education or having previously received
214 psychological services.

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

217 a. Whether the alleged offense is punishable by death or
218 life imprisonment.

219 b. Whether the alleged offense was against persons or
220 property.

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

223 d. The extent of the child's participation in the alleged
224 offense.

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

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

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

232 b. By the use of procedures, services, and facilities

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233 currently available to the adult court, including whether the
234 lowest permissible sentence under the Criminal Punishment Code
235 is a nonstate prison sanction.

236 6. Whether the child could obtain habilitative or
237 rehabilitative services available in the juvenile justice
238 system.

239 7. Whether the child could receive a sentence in juvenile
240 court which would provide adequate safety and protection for the
241 community.

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

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

253 (c) The adult court shall retain jurisdiction unless the
254 court finds by a preponderance of the evidence that the factors
255 listed in paragraph (a) support returning the child to juvenile
256 court.

257 (d) The adult court shall render an order that includes
258 specific findings of fact and the reasons for its decision. The
259 prosecution or defense may seek immediate review of the order
260 through interlocutory appeal. The order is reviewable on appeal
261 under the Florida Rules of Appellate Procedure.

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262 (4)~~(2)~~ EFFECT OF PROSECUTING CHILDREN AS ADULTS ~~DIRECT~~
263 ~~FILE.~~—

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

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

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

287 (5)~~(3)~~ CHARGES INCLUDED IN INFORMATION.—An information
288 filed pursuant to this section may include all charges that are
289 based on the same act, criminal episode, or transaction as the
290 primary offenses.

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

293 985.15 Filing decisions.—

294 (1) The state attorney may in all cases take action
295 independent of the action or lack of action of the juvenile
296 probation officer and shall determine the action that is in the
297 best interest of the public and the child. ~~If the child meets
298 the criteria requiring prosecution as an adult under s. 985.556,
299 the state attorney shall request the court to transfer and
300 certify the child for prosecution as an adult or shall provide
301 written reasons to the court for not making such a request. In
302 all other cases,~~ The state attorney may:

303 (a) File a petition for dependency;

304 (b) File a petition under chapter 984;

305 (c) File a petition for delinquency;

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

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

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

310 (g) Refer the child to a diversionary, pretrial
311 intervention, arbitration, or mediation program, or to some
312 other treatment or care program if such program commitment is
313 voluntarily accepted by the child or the child's parents or
314 legal guardian; or

315 (h) Decline to file.

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

318 985.565 Sentencing powers; procedures; alternatives for
319 juveniles prosecuted as adults.—

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- 320 (4) SENTENCING ALTERNATIVES.—
- 321 (a) *Adult sanctions*.—
- 322 1. Cases prosecuted on indictment.—If the child is found to
- 323 have committed the offense punishable by death or life
- 324 imprisonment, the child shall be sentenced as an adult. If the
- 325 juvenile is not found to have committed the indictable offense
- 326 but is found to have committed a lesser included offense or any
- 327 other offense for which he or she was indicted as a part of the
- 328 criminal episode, the court may sentence as follows:
- 329 a. As an adult;
- 330 b. Under chapter 958; or
- 331 c. As a juvenile under this section.
- 332 2. Other cases.—If a child who has been transferred for
- 333 criminal prosecution pursuant to information or waiver of
- 334 juvenile court jurisdiction is found to have committed a
- 335 violation of state law or a lesser included offense for which he
- 336 or she was charged as a part of the criminal episode, the court
- 337 may sentence as follows:
- 338 a. As an adult;
- 339 b. Under chapter 958; or
- 340 c. As a juvenile under this section.
- 341 3. ~~Notwithstanding any other provision to the contrary, if~~
- 342 ~~the state attorney is required to file a motion to transfer and~~
- 343 ~~certify the juvenile for prosecution as an adult under s.~~
- 344 ~~985.556(3) and that motion is granted, the court must impose~~
- 345 ~~adult sanctions.~~
- 346 4. Any sentence imposing adult sanctions is presumed
- 347 appropriate, and the court is not required to set forth specific
- 348 findings or enumerate the criteria in this subsection as any

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349 basis for its decision to impose adult sanctions.

350 ~~4.5.~~ When a child has been transferred for criminal
351 prosecution as an adult and has been found to have committed a
352 violation of state law, the disposition of the case may include
353 the enforcement of any restitution ordered in any juvenile
354 proceeding.

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

374 1. Place the child in a probation program under the
375 supervision of the department for an indeterminate period of
376 time until the child reaches the age of 19 years or sooner if
377 discharged by order of the court.

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378 2. Commit the child to the department for treatment in an
379 appropriate program for children for an indeterminate period of
380 time until the child is 21 or sooner if discharged by the
381 department. The department shall notify the court of its intent
382 to discharge no later than 14 days before discharge. Failure of
383 the court to timely respond to the department's notice shall be
384 considered approval for discharge.

385 3. Order disposition under ss. 985.435, 985.437, 985.439,
386 985.441, 985.45, and 985.455 as an alternative to youthful
387 offender or adult sentencing if the court determines not to
388 impose youthful offender or adult sanctions.

389
390 It is the intent of the Legislature that the criteria and
391 guidelines in this subsection are mandatory and that a
392 determination of disposition under this subsection is subject to
393 the right of the child to appellate review under s. 985.534.

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

396 985.03 Definitions.—As used in this chapter, the term:

397 (54) "Waiver hearing" means a hearing provided for under s.
398 985.556(3) ~~s. 985.556(4)~~.

399 Section 7. This act shall take effect July 1, 2024.