

1 A bill to be entitled
2 An act relating to direct filing of an information;
3 amending s. 985.265, F.S.; prohibiting holding a child
4 transferred to adult court for criminal prosecution in
5 an adult facility before a hearing; providing an
6 exception; amending s. 985.556, F.S.; deleting
7 provisions concerning involuntary mandatory waivers;
8 amending s. 985.557, F.S.; deleting provisions
9 allowing discretionary waivers of children 14 or 15
10 years of age for specified offenses; deleting
11 references to the state attorney's discretion to
12 direct file a juvenile; revising discretionary direct
13 file criteria; requiring a court to advise a child and
14 his or her parent or guardian of the child's right to
15 a hearing after an information transferring a child to
16 adult court is filed; authorizing a request for an
17 evidentiary hearing; requiring a hearing within a
18 certain time; requiring a judge to consider specified
19 information and factors; authorizing a judge to
20 consider certain reports; providing for continued
21 jurisdiction; providing an exception; requiring the
22 adult court's order to include certain findings;
23 authorizing review; amending ss. 985.03 and 985.565,
24 F.S.; conforming provisions to changes made by the
25 act; 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

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, unless the child waives his or her right to such hearing; or

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

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

68 Section 2. Subsections (4) and (5) of section 985.556,
69 Florida Statutes, are renumbered as subsections (3) and (4),
70 respectively, and present subsections (2) and (3) amended, to
71 read:

72 985.556 Waiver of juvenile court jurisdiction; hearing.—

73 (2) INVOLUNTARY DISCRETIONARY WAIVER. ~~Except as provided~~
74 ~~in subsection (3),~~ The state attorney may file a motion
75 requesting the court to transfer the child for criminal

76 prosecution if the child was 14 years of age or older at the
 77 time the alleged delinquent act or violation of law was
 78 committed.

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

80 ~~(a) If the child was 14 years of age or older, and if the~~
 81 ~~child has been previously adjudicated delinquent for an act~~
 82 ~~classified as a felony, which adjudication was for the~~
 83 ~~commission of, attempt to commit, or conspiracy to commit~~
 84 ~~murder, sexual battery, armed or strong-armed robbery,~~
 85 ~~earjacking, home-invasion robbery, aggravated battery,~~
 86 ~~aggravated assault, or burglary with an assault or battery, and~~
 87 ~~the child is currently charged with a second or subsequent~~
 88 ~~violent crime against a person; or~~

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

97
 98 ~~the state attorney shall request the court to transfer and~~
 99 ~~certify the child for prosecution as an adult or shall provide~~
 100 ~~written reasons to the court for not making such request, or~~

101 ~~proceed under s. 985.557(1). Upon the state attorney's request,~~
 102 ~~the court shall either enter an order transferring the case and~~
 103 ~~certifying the case for trial as if the child were an adult or~~
 104 ~~provide written reasons for not issuing such an order.~~

105 Section 3. Section 985.557, Florida Statutes, is amended
 106 to read:

107 985.557 Direct filing of an information; discretionary
 108 criteria.—

109 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS DIRECT
 110 FILE.—

111 ~~(a) With respect to any child who was 14 or 15 years of~~
 112 ~~age at the time the alleged offense was committed, the state~~
 113 ~~attorney may file an information when in the state attorney's~~
 114 ~~judgment and discretion the public interest requires that adult~~
 115 ~~sanctions be considered or imposed and when the offense charged~~
 116 ~~is for the commission of, attempt to commit, or conspiracy to~~
 117 ~~commit:~~

- 118 1. ~~Arson;~~
- 119 2. ~~Sexual battery;~~
- 120 3. ~~Robbery;~~
- 121 4. ~~Kidnapping;~~
- 122 5. ~~Aggravated child abuse;~~
- 123 6. ~~Aggravated assault;~~
- 124 7. ~~Aggravated stalking;~~
- 125 8. ~~Murder;~~

- 126 ~~9. Manslaughter;~~
- 127 ~~10. Unlawful throwing, placing, or discharging of a~~
- 128 ~~destructive device or bomb;~~
- 129 ~~11. Armed burglary in violation of s. 810.02(2)(b) or~~
- 130 ~~specified burglary of a dwelling or structure in violation of s.~~
- 131 ~~810.02(2)(c), or burglary with an assault or battery in~~
- 132 ~~violation of s. 810.02(2)(a);~~
- 133 ~~12. Aggravated battery;~~
- 134 ~~13. Any lewd or lascivious offense committed upon or in~~
- 135 ~~the presence of a person less than 16 years of age;~~
- 136 ~~14. Carrying, displaying, using, threatening, or~~
- 137 ~~attempting to use a weapon or firearm during the commission of a~~
- 138 ~~felony;~~
- 139 ~~15. Grand theft in violation of s. 812.014(2)(a);~~
- 140 ~~16. Possessing or discharging any weapon or firearm on~~
- 141 ~~school property in violation of s. 790.115;~~
- 142 ~~17. Home invasion robbery;~~
- 143 ~~18. Carjacking; or~~
- 144 ~~19. Grand theft of a motor vehicle in violation of s.~~
- 145 ~~812.014(2)(c)6. or grand theft of a motor vehicle valued at~~
- 146 ~~\$20,000 or more in violation of s. 812.014(2)(b) if the child~~
- 147 ~~has a previous adjudication for grand theft of a motor vehicle~~
- 148 ~~in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).~~
- 149 ~~(b)~~ With respect to any child who was 16 or 17 years of
- 150 age at the time the alleged forcible felony, as defined in s.

151 776.08 offense was committed, the state attorney may file an
 152 information when ~~in the state attorney's judgment and discretion~~
 153 the public interest requires that adult sanctions be considered
 154 or imposed. However, the state attorney may not file an
 155 information on a child charged with a misdemeanor, unless the
 156 child has had at least two previous adjudications ~~or~~
 157 ~~adjudications withheld~~ for delinquent acts, one of which
 158 involved an offense classified as a forcible felony under state
 159 law.

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

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

171 (a) The judge shall conduct the hearing within 30 days
 172 after the request, excluding Saturdays, Sundays, and legal
 173 holidays, unless the child or the child's attorney shows good
 174 cause for a delay. The purpose of the hearing is for the court
 175 to determine whether it is necessary for the community's

176 protection that the child be prosecuted in adult court. The
 177 judge shall consider all of the following:

178 1. Evaluations and assessments completed by the
 179 department.

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

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

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

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

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

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

201 the Department of Corrections, or agencies under contract with
202 either department.

203 e. Any history of trauma, abuse or neglect, foster care
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
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 including
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
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
266 as 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 (54) of section 985.03, Florida
287 Statutes, is amended to read:

288 985.03 Definitions.—As used in this chapter, the term:

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

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

293 985.565 Sentencing powers; procedures; alternatives for
294 juveniles prosecuted as adults.—

295 (4) SENTENCING ALTERNATIVES.—

296 (a) Adult sanctions.—

297 1. Cases prosecuted on indictment.—If the child is found
298 to have committed the offense punishable by death or life
299 imprisonment, the child shall be sentenced as an adult. If the
300 juvenile is not found to have committed the indictable offense

301 but is found to have committed a lesser included offense or any
 302 other offense for which he or she was indicted as a part of the
 303 criminal episode, the court may sentence as follows:

- 304 a. As an adult;
- 305 b. Under chapter 958; or
- 306 c. As a juvenile under this section.

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

- 313 a. As an adult;
- 314 b. Under chapter 958; or
- 315 c. As a juvenile under this section.

316 ~~3. Notwithstanding any other provision to the contrary, if~~
 317 ~~the state attorney is required to file a motion to transfer and~~
 318 ~~certify the juvenile for prosecution as an adult under s.~~
 319 ~~985.556(3) and that motion is granted, the court must impose~~
 320 ~~adult sanctions.~~

321 3.4. Any sentence imposing adult sanctions is presumed
 322 appropriate, and the court is not required to set forth specific
 323 findings or enumerate the criteria in this subsection as any
 324 basis for its decision to impose adult sanctions.

325 ~~4.5.~~ When a child has been transferred for criminal

326 prosecution as an adult and has been found to have committed a
327 violation of state law, the disposition of the case may include
328 the enforcement of any restitution ordered in any juvenile
329 proceeding.

330 (b) Juvenile sanctions.—For juveniles transferred to adult
331 court ~~but who do not qualify for such transfer under s.~~
332 ~~985.556(3)~~, the court may impose juvenile sanctions under this
333 paragraph. If juvenile sentences are imposed, the court shall,
334 under this paragraph, adjudge the child to have committed a
335 delinquent act. Adjudication of delinquency may not be deemed a
336 conviction, nor shall it operate to impose any of the civil
337 disabilities ordinarily resulting from a conviction. The court
338 shall impose an adult sanction or a juvenile sanction and may
339 not sentence the child to a combination of adult and juvenile
340 punishments. An adult sanction or a juvenile sanction may
341 include enforcement of an order of restitution or probation
342 previously ordered in any juvenile proceeding. However, if the
343 court imposes a juvenile sanction and the department determines
344 that the sanction is unsuitable for the child, the department
345 shall return custody of the child to the sentencing court for
346 further proceedings, including the imposition of adult
347 sanctions. Upon adjudicating a child delinquent under subsection
348 (1), the court may:

349 1. Place the child in a probation program under the
350 supervision of the department for an indeterminate period of

351 time until the child reaches the age of 19 years or sooner if
352 discharged by order of the court.

353 2. Commit the child to the department for treatment in an
354 appropriate program for children for an indeterminate period of
355 time until the child is 21 or sooner if discharged by the
356 department. The department shall notify the court of its intent
357 to discharge no later than 14 days before discharge. Failure of
358 the court to timely respond to the department's notice shall be
359 considered approval for discharge.

360 3. Order disposition under ss. 985.435, 985.437, 985.439,
361 985.441, 985.45, and 985.455 as an alternative to youthful
362 offender or adult sentencing if the court determines not to
363 impose youthful offender or adult sanctions.

364
365 It is the intent of the Legislature that the criteria and
366 guidelines in this subsection are mandatory and that a
367 determination of disposition under this subsection is subject to
368 the right of the child to appellate review under s. 985.534.

369 Section 6. This act shall take effect July 1, 2024.