

By Senator Smith

29-00407-12

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1 A bill to be entitled
2 An act relating to criminal prosecution of juveniles;
3 amending s. 985.557, F.S.; providing additional
4 circumstances for the discretionary direct filing of
5 charges against certain juveniles; providing criteria
6 for determining when a case against a juvenile should
7 be recommended to the court to be transferred for
8 criminal prosecution; providing criteria for
9 consideration of a child's request to an adult court
10 to return a criminal case to the juvenile justice
11 system; reenacting s. 985.556(3), F.S., relating to
12 involuntary mandatory waiver of juvenile court
13 jurisdiction, to incorporate the amendments made to s.
14 985.557, F.S., in a reference thereto; providing an
15 effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Paragraph (c) is added to subsection (1) of
20 section 985.557, Florida Statutes, subsection (4) of that
21 section is amended, and subsection (5) is added to that section,
22 to read:

23 985.557 Direct filing of an information; discretionary and
24 mandatory criteria.—

25 (1) DISCRETIONARY DIRECT FILE.—

26 (c) Except as provided in paragraph (b), the state attorney
27 may file an information against a child otherwise eligible under
28 this section if the child has a prior felony or misdemeanor
29 adjudication or an adjudication withheld.

29-00407-12

2012418

30 (4) DIRECT-FILE CRITERIA.—

31 (a) When a child is eligible to have an information filed
32 by the state attorney under subsection (1), the state attorney
33 shall use the following criteria to determine whether to file an
34 information:

35 1. The seriousness of the alleged offense and whether
36 transferring the child is necessary for protection of the
37 community, including:

38 a. The recommendation of the department, through review and
39 consideration of the recommendations of the department's
40 caseworker.

41 b. The probable cause as found in the report, affidavit, or
42 complaint, including:

43 (I) Whether the alleged offense was committed in an
44 aggressive, violent, premeditated, or willful manner.

45 (II) Whether the alleged offense was against persons or
46 against property, with greater weight being given to offenses
47 against persons, especially if personal injury resulted.

48 (III) The strength of the state's evidence.

49 c. The sophistication and maturity of the child.

50 2. The record and previous history of the child, including:

51 a. Previous contacts with the department, the Department of
52 Corrections, the former Department of Health and Rehabilitative
53 Services, the Department of Children and Family Services, other
54 law enforcement agencies, and courts.

55 b. Prior periods of probation.

56 c. Prior adjudications that the child committed a
57 delinquent act or violation of law, with greater weight being
58 given if the child has previously been found by a court to have

29-00407-12

2012418

59 committed a delinquent act or violation of law involving
60 violence to persons.

61 d. Prior commitments to institutions of the department, the
62 Department of Corrections, or agencies under contract with
63 either department.

64 e. Patterns of criminality or patterns of escalation.

65 3. The prospects for adequate protection of the public and
66 the likelihood of reasonable rehabilitation of the child, if the
67 child is found to have committed the alleged offense, by the use
68 of procedures, services, and facilities currently available to
69 the juvenile court.

70 4. Cost-effective alternatives available to divert the
71 child from the criminal and juvenile justice systems and offer
72 rehabilitative services for the child.

73 (b) If the state attorney files an information against a
74 child under this section, the state attorney shall file with the
75 court his or her written explanation, addressing the factors
76 listed in paragraph (a), as to why the child should be
77 transferred for criminal prosecution. ~~An information filed~~
78 ~~pursuant to this section may include all charges that are based~~
79 ~~on the same act, criminal episode, or transaction as the primary~~
80 ~~offenses.~~

81 (5) REVERSE WAIVER.—Any child over whom the adult court has
82 obtained original jurisdiction may request, in writing, a
83 hearing to determine whether the child shall remain in adult
84 court. The adult court shall retain jurisdiction unless the
85 child proves by a preponderance of evidence all of the
86 following:

87 (a) The child could obtain services available in the

29-00407-12

2012418

88 juvenile justice system which could lessen the possibility of
89 the child reoffending in the future.

90 (b) The child's best interests would be served by
91 prosecuting the case in juvenile court.

92 (c) The child could receive juvenile sanctions that would
93 provide adequate safety and protection for the community.

94 (d) The child is not charged with a felony that is
95 punishable by death or life imprisonment.

96 (e) The child has not previously been convicted and
97 sentenced as an adult.

98 Section 2. For the purpose of incorporating the amendment
99 made by this act to section 985.557, Florida Statutes, in a
100 reference thereto, subsection (3) of section 985.556, Florida
101 Statutes, is reenacted to read:

102 985.556 Waiver of juvenile court jurisdiction; hearing.—

103 (3) INVOLUNTARY MANDATORY WAIVER.—

104 (a) If the child was 14 years of age or older, and if the
105 child has been previously adjudicated delinquent for an act
106 classified as a felony, which adjudication was for the
107 commission of, attempt to commit, or conspiracy to commit
108 murder, sexual battery, armed or strong-armed robbery,
109 carjacking, home-invasion robbery, aggravated battery,
110 aggravated assault, or burglary with an assault or battery, and
111 the child is currently charged with a second or subsequent
112 violent crime against a person; or

113 (b) If the child was 14 years of age or older at the time
114 of commission of a fourth or subsequent alleged felony offense
115 and the child was previously adjudicated delinquent or had
116 adjudication withheld for or was found to have committed, or to

29-00407-12

2012418

117 have attempted or conspired to commit, three offenses that are
118 felony offenses if committed by an adult, and one or more of
119 such felony offenses involved the use or possession of a firearm
120 or violence against a person;

121
122 the state attorney shall request the court to transfer and
123 certify the child for prosecution as an adult or shall provide
124 written reasons to the court for not making such request, or
125 proceed under s. 985.557(1). Upon the state attorney's request,
126 the court shall either enter an order transferring the case and
127 certifying the case for trial as if the child were an adult or
128 provide written reasons for not issuing such an order.

129 Section 3. This act shall take effect July 1, 2012.