

1 A bill to be entitled
2 An act relating to charging youths as adults in
3 criminal proceedings; amending s. 985.557, F.S.;
4 specifying offenses that allow a state attorney to
5 file an information for specified juvenile offenders;
6 providing that certain open felony cases may also be
7 transferred to the adult court; prohibiting the filing
8 of informations for juveniles with certain conditions;
9 specifying the effects of a direct file; prohibiting
10 certain juvenile offenders from being transferred to
11 adult court; requiring the Department of Juvenile
12 Justice to collect specified data related to specified
13 juvenile offenders transferred to adult court;
14 requiring a report; amending s. 985.56, F.S.;
15 specifying a minimum age for indictment of a juvenile
16 for certain offenses; prohibiting certain juvenile
17 offenders from being transferred to adult court;
18 deleting provisions relating to sentencing of
19 juveniles as adults for certain offenses; revising
20 provisions relating to transfer of other pending
21 felony charges when a child has been indicted;
22 amending s. 985.565, F.S.; revising factors to be
23 considered in determining whether to impose juvenile
24 or adult sanctions for violations of law by a
25 juvenile; requiring the court to consider specified
26 reports in a hearing on such sentencing; providing for

27 | rights to examine the reports and question the parties
 28 | responsible for them; revising provisions relating to
 29 | sentencing alternatives; amending s. 985.04 and
 30 | 985.556, F.S.; conforming provisions to changes made
 31 | by the act; providing an effective date.

32 |

33 | Be It Enacted by the Legislature of the State of Florida:

34 |

35 | Section 1. Section 985.557, Florida Statutes, is amended
 36 | to read:

37 | (Substantial rewording of section. See

38 | s. 985.557, F.S., for present text.)

39 | 985.557 Direct filing of an information.-

40 | (1) DIRECT FILE.-

41 | (a) With respect to a child who was 17 years of age at the
 42 | time the alleged offense was committed, the state attorney may
 43 | file an information when, in the state attorney's judgment and
 44 | discretion, the public interest requires that adult sanctions be
 45 | considered and when the offense charged is for the commission of
 46 | or attempt to commit:

47 | 1. Murder;

48 | 2. Manslaughter;

49 | 3. Aggravated sexual battery;

50 | 4. Armed robbery;

51 | 5. Aggravated assault with a firearm;

52 | 6. Aggravated child abuse;

- 53 7. Aggravated stalking;
 54 8. Kidnapping;
 55 9. Unlawful throwing, placing, or discharging of a
 56 destructive device or bomb;
 57 10. Aggravated battery resulting in great bodily harm,
 58 permanent disability, or permanent disfigurement;
 59 11. Carrying, displaying, using, or threatening or
 60 attempting to use a weapon or firearm in furtherance of the
 61 commission of a felony;
 62 12. Possessing or discharging a firearm on school property
 63 in violation of s. 790.115;
 64 13. Home invasion robbery;
 65 14. Carjacking; or
 66 15. Aggravated animal cruelty.
 67 (b) With respect to a child who was 16 or 17 years of age
 68 at the time the alleged offense was committed, the state
 69 attorney may file an information when, in the state attorney's
 70 judgment and discretion, the public interest requires that adult
 71 sanctions be considered and when the offense charged is for the
 72 commission of DUI resulting in fatality, great bodily harm,
 73 permanent disability, or permanent disfigurement to a person
 74 other than the accused or another person who voluntarily was a
 75 passenger in the vehicle operated by the accused.
 76 (c) With respect to a child who was 15 or 16 years of age
 77 at the time the alleged offense was committed, the state
 78 attorney may file an information when, in the state attorney's

79 judgment and discretion, the public interest requires that adult
 80 sanctions be considered and when the offense charged is for the
 81 commission of or attempt to commit:

- 82 1. Murder;
- 83 2. Manslaughter; or
- 84 3. Aggravated sexual battery.

85 (d) With respect to a child who was 14 years of age at the
 86 time the alleged offense was committed, the state attorney may
 87 seek an indictment before a grand jury when, in the state
 88 attorney's judgment and discretion, the public interest requires
 89 that adult sanctions be considered and when the offense charged
 90 is for the commission of or attempt to commit:

- 91 1. Murder;
- 92 2. Manslaughter; or
- 93 3. Aggravated sexual battery.

94 (2) CHILDREN NOT SUBJECT TO DIRECT FILE.—Subsection (1)
 95 does not apply to a child who suffers from mental illness, a
 96 developmental or intellectual disability, substance abuse, or
 97 any other condition amenable to treatment, habilitation, or
 98 rehabilitation in the juvenile justice system.

99 (3) EFFECT OF DIRECT FILE.—When a child is transferred for
 100 criminal prosecution as an adult, the court may transfer and
 101 certify to the adult circuit court for prosecution of the child
 102 as an adult all related felony cases pertaining to the child
 103 which have not yet resulted in a plea of guilty or nolo
 104 contendere or in which a finding of guilt has not been made. If

105 the child is acquitted of all charged offenses or lesser
 106 included offenses contained in the original case transferred to
 107 adult court, any felony cases that were transferred to adult
 108 court under this subsection shall be subject to the same
 109 penalties such cases were subject to before being transferred to
 110 adult court.

111 (4) TRANSFER PROHIBITION.—Notwithstanding any other
 112 provision of law, a child who is eligible for direct file and
 113 who is pending a competency hearing in juvenile court or has
 114 been previously found to be incompetent and has not been
 115 restored to competency by a court may not be transferred to
 116 adult court for criminal prosecution.

117 (5) DATA COLLECTION RELATING TO DIRECT FILE.—

118 (a) The department shall collect data regarding children
 119 who qualify for direct file under subsection (1), including, but
 120 not limited to:

- 121 1. Age.
- 122 2. Race and ethnicity.
- 123 3. Gender.
- 124 4. Circuit and county of residence.
- 125 5. Circuit and county of offense.
- 126 6. Prior adjudicated offenses.
- 127 7. Prior periods of probation.
- 128 8. Previous contacts with law enforcement agencies or the
 129 courts.
- 130 9. Initial charges.

- 131 10. Charges at disposition.
- 132 11. Whether adult codefendants were involved.
- 133 12. Whether child codefendants were involved who were
134 transferred to adult court.
- 135 13. Whether the child was represented by counsel.
- 136 14. Whether the child had waived counsel.
- 137 15. Risk assessment instrument score.
- 138 16. The child's medical, mental health, substance abuse,
139 or trauma history.
- 140 17. The child's history of physical or mental impairment
141 or disability-related accommodations.
- 142 18. The child's history of abuse or neglect.
- 143 19. The child's history of foster care placements,
144 including the number of prior placements.
- 145 20. Whether the child has experienced a failed adoption.
- 146 21. Whether the child has fetal alcohol syndrome or was
147 exposed to controlled substances at birth.
- 148 22. Whether the child has below-average intellectual
149 functioning or is eligible for exceptional student education
150 services.
- 151 23. Whether the child has received mental health services
152 or treatment.
- 153 24. Whether the child has been the subject of a CINS/FINS
154 or dependency petition.
- 155 25. Plea offers made by the state and the outcome of any
156 plea offers.

157 26. Whether the child was transferred for criminal
 158 prosecution as an adult.

159 27. The case resolution in juvenile court.

160 28. The case resolution in adult court.

161 (b) When a child is transferred for criminal prosecution
 162 as an adult, the department shall also collect disposition data,
 163 including, but not limited to, whether the child received adult
 164 sanctions, juvenile sanctions, or diversion, and, if sentenced
 165 to prison, length of prison sentence or enhanced sentence.

166 (c) The department shall annually provide a report
 167 analyzing this aggregated data to the President of the Senate
 168 and the Speaker of the House of Representatives.

169 Section 2. Section 985.56, Florida Statutes, is amended to
 170 read:

171 985.56 Indictment of a juvenile.—

172 (1) A child who is 14 years of age or older at the time of
 173 the charged offense and ~~of any age~~ who is charged with murder,
 174 manslaughter, or aggravated sexual battery ~~a violation of state~~
 175 law punishable by death or by life imprisonment is subject to
 176 the jurisdiction of the court as set forth in s. 985.0301(2)
 177 unless and until an indictment on the charge is returned by the
 178 grand jury. When such indictment is returned, the petition for
 179 delinquency, if any, must be dismissed and the child must be
 180 tried ~~and handled in every respect~~ as an adult:

181 (a) On the indicting offense ~~punishable by death or by~~
 182 ~~life imprisonment~~; and

183 (b) On all other felonies or misdemeanors charged in the
184 indictment which are based on the same act or transaction as the
185 indicting offense ~~punishable by death or by life imprisonment or~~
186 ~~on one or more acts or transactions connected with the offense~~
187 ~~punishable by death or by life imprisonment.~~

188 (2) An adjudicatory hearing may not be held until 21 days
189 after the child is taken into custody and charged with having
190 committed an indictable offense ~~punishable by death or by life~~
191 ~~imprisonment~~, unless the state attorney advises the court in
192 writing that he or she does not intend to present the case to
193 the grand jury, or has presented the case to the grand jury and
194 the grand jury has not returned an indictment. If the court
195 receives such a notice from the state attorney, or if the grand
196 jury fails to act within the 21-day period, the court may
197 proceed as otherwise authorized under this part.

198 (3) Notwithstanding any other provision of law, a child
199 who is eligible for indictment and who is pending a competency
200 hearing in juvenile court or has been previously found to be
201 incompetent and has not been restored to competency by a court
202 may not be transferred to adult court for criminal prosecution.

203 ~~(3) If the child is found to have committed the offense~~
204 ~~punishable by death or by life imprisonment, the child shall be~~
205 ~~sentenced as an adult. If the juvenile is not found to have~~
206 ~~committed the indictable offense but is found to have committed~~
207 ~~a lesser included offense or any other offense for which he or~~
208 ~~she was indicted as a part of the criminal episode, the court~~

209 ~~may sentence under s. 985.565.~~

210 (4) (a) Once a child has been indicted pursuant to this
 211 section and has been found to have committed any offense for
 212 which he or she was indicted as a part of the criminal episode,
 213 the child shall be handled thereafter ~~in every respect~~ as if an
 214 adult for any subsequent violation of state law, unless the
 215 court imposes juvenile sanctions under s. 985.565.

216 (b) When a child has been indicted pursuant to this
 217 section, the court may ~~shall immediately~~ transfer and certify to
 218 the adult circuit court all related felony cases pertaining to
 219 the child, for prosecution of the child as an adult, which have
 220 not yet resulted in a plea of guilty or nolo contendere or in
 221 which a finding of guilt has not been made. If the child is
 222 acquitted of all charged offenses or lesser included offenses
 223 contained in the indictment case, any ~~all~~ felony cases that were
 224 transferred to adult court pursuant to this paragraph shall be
 225 subject to the same penalties such cases were subject to before
 226 being transferred to adult court.

227 Section 3. Subsection (1), paragraph (c) of subsection
 228 (3), and subsection (4) of section 985.565, Florida Statutes,
 229 are amended to read:

230 985.565 Sentencing powers; procedures; alternatives for
 231 juveniles prosecuted as adults.—

232 (1) POWERS OF DISPOSITION.—

233 (a) A child who is found to have committed a violation of
 234 law may, as an alternative to adult dispositions, be committed

235 to the department for treatment in an appropriate program for
236 children outside the adult correctional system or be placed on
237 juvenile probation.

238 (b) In determining whether to impose juvenile sanctions or
239 ~~instead of~~ adult sanctions, the court shall consider the
240 following criteria:

241 1. The seriousness of the offense to the community and
242 whether the protection of the community would be best served ~~be~~
243 ~~protected~~ by juvenile or adult sanctions.

244 2. The extent of the child's participation or role in the
245 offense.

246 3. The effect, if any, of familial or peer pressure on the
247 child's actions.

248 ~~4.2.~~ Whether the offense was committed in an aggressive,
249 violent, premeditated, or willful manner.

250 ~~5.3.~~ Whether the offense was against persons or against
251 property, with greater weight being given to offenses against
252 persons, especially if personal injury resulted.

253 ~~6.4.~~ The sophistication and maturity of the child,
254 including:

255 a. The child's age, intellectual capacity, and mental and
256 emotional health at the time of the offense.

257 b. The child's background, including his or her family,
258 home, and community environment.

259 c. The effect, if any, of immaturity, impetuosity, or
260 failure to appreciate the risks and consequences on the child's

261 participation in the offense.

262 d. The effect, if any, of characteristics attributable to
 263 the child's age on the child's judgment ~~offender.~~

264 ~~7.5.~~ The record and previous history of the offender,
 265 including:

266 a. Previous contacts with the Department of Corrections,
 267 the Department of Juvenile Justice, the former Department of
 268 Health and Rehabilitative Services, and the Department of
 269 Children and Families and the adequacy and appropriateness of
 270 the services provided to address the child's needs, ~~law~~
 271 ~~enforcement agencies, and the courts.~~

272 b. Prior periods of probation.

273 c. Prior adjudications that the offender committed a
 274 delinquent act or violation of law as a child.

275 d. Prior commitments to the Department of Juvenile
 276 Justice, the former Department of Health and Rehabilitative
 277 Services, the Department of Children and Families, or other
 278 facilities or institutions and the adequacy and appropriateness
 279 of the services provided to address the child's needs.

280 e. Previous contacts with law enforcement agencies and the
 281 courts.

282 f. History of abuse, abandonment, or neglect.

283 g. Identification of the child as having a mental,
 284 physical, or intellectual or developmental disability or having
 285 previously received mental health services or treatment.

286 ~~8.6.~~ The prospects for adequate protection of the public

287 and the likelihood of deterrence and reasonable rehabilitation
288 of the offender if assigned to services and facilities of the
289 Department of Juvenile Justice.

290 ~~9.7.~~ Whether the Department of Juvenile Justice has
291 appropriate programs, facilities, and services immediately
292 available.

293 10. Whether the Department of Corrections has appropriate
294 programs, facilities, and services immediately available.

295 (c) The adult court shall render an order including
296 specific findings of fact and the reasons for its decision. The
297 order shall be reviewable on appeal under s. 985.534 and the
298 Florida Rules of Appellate Procedure.

299 ~~8. Whether adult sanctions would provide more appropriate~~
300 ~~punishment and deterrence to further violations of law than the~~
301 ~~imposition of juvenile sanctions.~~

302 (3) SENTENCING HEARING.—

303 (c) The court may receive and consider any other relevant
304 and material evidence, including other reports, written or oral,
305 in its effort to determine the action to be taken with regard to
306 the child, and may rely upon such evidence to the extent of its
307 probative value even if the evidence would not be competent in
308 an adjudicatory hearing. The court shall consider any reports
309 that may assist it, including, but not limited to, prior
310 predisposition reports, psychosocial assessments, individual
311 education plans, developmental assessments, school records,
312 abuse or neglect reports, home studies, protective

313 investigations, and psychological or psychiatric evaluations.
314 The child, the child's defense counsel, and the state attorney
315 have the right to examine these reports and to question the
316 parties responsible for them at the hearing.

317 (4) SENTENCING ALTERNATIVES.—

318 (a) ~~Adult~~ Sanctions.—

319 ~~1. Cases prosecuted on indictment.—If the child is found~~
320 ~~to have committed the offense punishable by death or life~~
321 ~~imprisonment, the child shall be sentenced as an adult. If the~~
322 ~~juvenile is not found to have committed the indictable offense~~
323 ~~but is found to have committed a lesser included offense or any~~
324 ~~other offense for which he or she was indicted as a part of the~~
325 ~~criminal episode, the court may sentence as follows:~~

326 ~~a. As an adult;~~

327 ~~b. Under chapter 958; or~~

328 ~~c. As a juvenile under this section.~~

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

335 ~~1.a.~~ As an adult;

336 ~~2.b.~~ As a youthful offender under chapter 958; or

337 ~~3.c.~~ As a juvenile under this section.

338 ~~3. Notwithstanding any other provision to the contrary, if~~

339 ~~the state attorney is required to file a motion to transfer and~~
340 ~~certify the juvenile for prosecution as an adult under s.~~
341 ~~985.556(3) and that motion is granted, or if the state attorney~~
342 ~~is required to file an information under s. 985.557(2)(a) or~~
343 ~~(b), the court must impose adult sanctions.~~

344 (b)4. Findings.~~The court must~~ Any sentence imposing adult
345 ~~sanctions is presumed appropriate, and the court is not required~~
346 ~~to~~ set forth specific findings or enumerate the criteria in this
347 subsection as any basis for its decision to impose adult,
348 youthful offender, or juvenile sanctions.

349 (c)5. Restitution.~~When a child has been transferred for~~
350 ~~criminal prosecution as an adult and has been found to have~~
351 ~~committed a violation of state law, the disposition of the case~~
352 ~~may include the enforcement of any restitution ordered in any~~
353 ~~juvenile proceeding.~~

354 (d)(b) Juvenile sanctions.~~If a juvenile sentence is For~~
355 ~~juveniles transferred to adult court but who do not qualify for~~
356 ~~such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b),~~
357 ~~the court may impose juvenile sanctions under this paragraph. If~~
358 ~~juvenile sentences are imposed, the court shall, under this~~
359 ~~paragraph, adjudge the child to have committed a delinquent act.~~
360 Adjudication of delinquency shall not be deemed a conviction,
361 nor shall it operate to impose any of the civil disabilities
362 ordinarily resulting from a conviction. ~~The court shall impose~~
363 ~~an adult sanction or a juvenile sanction and may not sentence~~
364 ~~the child to a combination of adult and juvenile punishments. An~~

365 adult sanction or a juvenile sanction may include enforcement of
366 an order of restitution or probation previously ordered in any
367 juvenile proceeding. ~~However, if the court imposes a juvenile~~
368 ~~sanction and the department determines that the sanction is~~
369 ~~unsuitable for the child, the department shall return custody of~~
370 ~~the child to the sentencing court for further proceedings,~~
371 ~~including the imposition of adult sanctions.~~ Upon adjudicating a
372 child delinquent under subsection (1), the court may:

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

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

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

388 (e) ~~(e)~~ Adult sanctions upon failure of juvenile
389 sanctions.—If a child proves not to be suitable to a commitment
390 program, juvenile probation program, or treatment program under

391 paragraph (d) ~~(b)~~, the department shall provide the sentencing
392 court with a written report outlining the basis for its
393 objections to the juvenile sanction and shall simultaneously
394 provide a copy of the report to the state attorney and the
395 defense counsel. The department shall schedule a hearing within
396 30 days. Upon hearing, the court may revoke the previous
397 adjudication, impose an adjudication of guilt, and impose any
398 sentence which it may lawfully impose, giving credit for all
399 time spent by the child in the department. The court may also
400 classify the child as a youthful offender under s. 958.04, if
401 appropriate. For purposes of this paragraph, a child may be
402 found not suitable to a commitment program, community control
403 program, or treatment program under paragraph (d) ~~(b)~~ if the
404 child commits a new violation of law while under juvenile
405 sanctions, if the child commits any other violation of the
406 conditions of juvenile sanctions, or if the child's actions are
407 otherwise determined by the court to demonstrate a failure of
408 juvenile sanctions.

409 (f) ~~(d)~~ Further proceedings heard in adult court.—When a
410 child is sentenced to juvenile sanctions, further proceedings
411 involving those sanctions shall continue to be heard in the
412 adult court.

413 (g) ~~(e)~~ School attendance.—If the child is attending or is
414 eligible to attend public school and the court finds that the
415 victim or a sibling of the victim in the case is attending or
416 may attend the same school as the child, the court placement

417 order shall include a finding pursuant to the proceeding
 418 described in s. 985.455(2), regardless of whether adjudication
 419 is withheld.

420
 421 It is the intent of the Legislature that the criteria and
 422 guidelines in this subsection are mandatory and that a
 423 determination of disposition under this subsection is subject to
 424 the right of the child to appellate review under s. 985.534.

425 Section 4. Paragraph (d) of subsection (2) of section
 426 985.04, Florida Statutes, is amended to read:

427 985.04 Oaths; records; confidential information.—

428 (2) Notwithstanding any other provisions of this chapter,
 429 the name, photograph, address, and crime or arrest report of a
 430 child:

431 (d) Taken into custody by a law enforcement officer for a
 432 violation of law subject to s. 985.557(1)(a), (b), or (c)
 433 ~~985.557(2)(b) or (d)~~; or

434
 435 shall not be considered confidential and exempt from s.
 436 119.07(1) solely because of the child's age.

437 Section 5. Subsection (1) of section 985.556, Florida
 438 Statutes, is amended to read:

439 985.556 Waiver of juvenile court jurisdiction; hearing.—

440 (1) VOLUNTARY WAIVER.—The court shall transfer and certify
 441 a child's criminal case for trial as an adult if the child is
 442 alleged to have committed a violation of law and, prior to the

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443 commencement of an adjudicatory hearing, the child, joined by a
444 parent or, in the absence of a parent, by the guardian or
445 guardian ad litem, demands in writing to be tried as an adult.
446 Once a child has been transferred for criminal prosecution
447 pursuant to a voluntary waiver hearing and has been found to
448 have committed the presenting offense or a lesser included
449 offense, the child shall be handled thereafter in every respect
450 as an adult for any subsequent violation of state law, unless
451 the court imposes juvenile sanctions under s. 985.565(4)(d)
452 ~~985.565(4)(b)~~.

453 Section 6. This act shall take effect July 1, 2015.