

1                                   A bill to be entitled  
 2           An act relating to judicial review of direct filing of  
 3           juvenile defendants; amending s. 985.557, F.S.;  
 4           providing for a hearing to determine whether a child  
 5           transferred to adult court should remain there;  
 6           providing procedures; specifying factors to be  
 7           considered by the court; providing for consideration  
 8           and examination of reports; providing for retention of  
 9           jurisdiction; providing for appeals; amending s.  
 10          985.56, F.S.; conforming provisions to changes made by  
 11          the act; providing an effective date.

13 Be It Enacted by the Legislature of the State of Florida:

15           Section 1. Subsection (5) is added to section 985.557,  
 16 Florida Statutes, to read:

17           985.557 Direct filing of an information; discretionary and  
 18 mandatory criteria.—

19           (5) HEARING.—A child who is transferred to adult court  
 20 under s. 985.56 or this section may request, in writing, a  
 21 hearing to determine whether the child shall remain in adult  
 22 court.

23           (a) The judge shall conduct the hearing within 30 days,  
 24 excluding Saturdays, Sundays, and legal holidays, after the  
 25 filing of the request, unless good cause is shown for a delay.

26 The purpose of the hearing is for the court to determine whether  
27 it is necessary for protection of the community that the child  
28 is prosecuted in adult court. The judge shall consider:

29 1. The recommendation of the department, through review  
30 and consideration of the recommendations of the department's  
31 caseworker.

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

34 a. The effect, if any, of immaturity, impetuosity, or  
35 failure to appreciate risks and consequences on the child's  
36 participation in the offense.

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

39 c. The effect, if any, of characteristics attributable to  
40 the defendant's youth on the defendant's judgment.

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

43 a. Previous contacts with the department, the Department  
44 of Corrections, the Department of Children and Families, other  
45 law enforcement agencies, and the courts.

46 b. Prior periods of probation.

47 c. Prior adjudications that the child committed a  
48 delinquent act or violation of law, with greater weight being  
49 given if the child has previously been found by a court to have  
50 committed a delinquent act or violation of law involving

51 violence to persons.

52 d. Prior commitments to institutions of the department,  
53 the Department of Corrections, or agencies under contract with  
54 either department.

55 e. Patterns of criminality or patterns of escalation.

56 f. History of trauma, abuse or neglect, foster care  
57 placements, failed adoption, fetal alcohol syndrome, exposure to  
58 controlled substances at birth, or below average intellectual  
59 functioning.

60 g. Identification of the child as a student requiring  
61 Exceptional Student Education or having previously received  
62 psychological services.

63 h. Whether the child has previously been convicted and  
64 sentenced as an adult.

65 4. The nature of the alleged offense and the child's  
66 participation, including:

67 a. Whether the offense is punishable by death or life  
68 imprisonment.

69 b. Whether the offense was against persons or property.

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

72 d. The extent of the child's alleged participation in the  
73 offense.

74 e. The effect, if any, of familial pressure or peer  
75 pressure on the defendant's actions.

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

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

81        b. By the use of procedures, services and facilities  
82 currently available to the adult court, including whether the  
83 lowest permissible sentence under the Criminal Punishment Code  
84 is a nonstate prison sanction.

85        6. Cost-effective alternatives available to divert the  
86 child from the criminal and juvenile justice systems and offer  
87 rehabilitative services for the child.

88        7. Whether the child could obtain habilitative or  
89 rehabilitative services available in the juvenile justice  
90 system.

91        8. Whether the child could receive a sentence in juvenile  
92 court that would provide adequate safety and protection for the  
93 community.

94        9. Whether the child's best interests would be served by  
95 prosecuting the child in juvenile court.

96        (b) The judge may consider any reports that may assist him  
97 or her, including prior pre-disposition reports, psycho-social  
98 assessments, individualized educational programs (IEPs),  
99 developmental assessments, school records, abuse or neglect  
100 reports, home studies, protective investigations, and

101 psychological and psychiatric evaluations. The child, the  
102 child's parents or legal guardians, defense counsel, and the  
103 State Attorney, shall have the right to examine these reports  
104 and to question the persons responsible for them at the hearing.

105 (c) The adult court shall retain jurisdiction unless the  
106 court finds by a preponderance of evidence that the factors  
107 listed in paragraph (a) support returning the child to juvenile  
108 court.

109 (d) The adult court shall render an order including  
110 specific findings of fact and the reasons for its decision. The  
111 order shall be reviewable on appeal under s. 985.534 and the  
112 Florida Rules of Appellate Procedure.

113 Section 2. Subsection (1) of section 985.56, Florida  
114 Statutes, is amended to read:

115 985.56 Indictment of a juvenile.—

116 (1) A child of any age who is charged with a violation of  
117 state law punishable by death or by life imprisonment is subject  
118 to the jurisdiction of the court as set forth in s. 985.0301(2)  
119 unless and until an indictment on the charge is returned by the  
120 grand jury. When such indictment is returned, the petition for  
121 delinquency, if any, must be dismissed and, subject to review  
122 under s. 985.557(5), the child must be tried and handled in  
123 every respect as an adult:

124 (a) On the offense punishable by death or by life  
125 imprisonment; and

HB 1293

2019

126 (b) On all other felonies or misdemeanors charged in the  
127 indictment which are based on the same act or transaction as the  
128 offense punishable by death or by life imprisonment or on one or  
129 more acts or transactions connected with the offense punishable  
130 by death or by life imprisonment.

131 Section 3. This act shall take effect July 1, 2019.