

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Bush offered the following:

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Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (1) and (2) of section 985.557, Florida Statutes, are amended to read:

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

(1) DISCRETIONARY DIRECT FILE.—

(a) With respect to any child who was 14 or 15 years of age at the time the alleged offense was committed, the state attorney may file an information when ~~in the state attorney's judgment and discretion~~ the public interest requires that adult sanctions be considered or imposed and when the offense charged

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17 is for the commission of or, attempt to commit, ~~or conspiracy to~~
18 ~~commit~~:

- 19 1. Arson;
- 20 2. Sexual battery;
- 21 3. Robbery;
- 22 4. Kidnapping;
- 23 5. Aggravated child abuse;
- 24 6. Aggravated assault;
- 25 7. Aggravated stalking;
- 26 8. Murder;
- 27 9. Manslaughter;
- 28 10. Unlawful throwing, placing, or discharging of a
29 destructive device or bomb;
- 30 11. Armed burglary in violation of s. 810.02(2)(b) or
31 specified burglary of a dwelling or structure in violation of s.
32 810.02(2)(c), or burglary with an assault or battery in
33 violation of s. 810.02(2)(a);
- 34 12. Aggravated battery;
- 35 13. Any lewd or lascivious offense committed upon or in
36 the presence of a person less than 16 years of age;
- 37 14. Carrying, displaying, using, threatening, or
38 attempting to use a weapon or firearm during the commission of a
39 felony;
- 40 15. Grand theft in violation of s. 812.014(2)(a);

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41 16. Possessing or discharging any weapon or firearm on
42 school property in violation of s. 790.115;

43 17. Home invasion robbery;

44 18. Carjacking; or

45 19. Grand theft of a motor vehicle in violation of s.
46 812.014(2)(c)6. or grand theft of a motor vehicle valued at
47 \$20,000 or more in violation of s. 812.014(2)(b) if the child
48 has a previous adjudication for grand theft of a motor vehicle
49 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

50 (b) With respect to any child who was 16 or 17 years of
51 age at the time the alleged offense was committed, the state
52 attorney may file an information when ~~in the state attorney's~~
53 ~~judgment and discretion~~ the public interest requires that adult
54 sanctions be considered or imposed. However, the state attorney
55 may not file an information on a child charged with a
56 misdemeanor, unless the child has had at least two previous
57 adjudications ~~or adjudications withheld~~ for delinquent acts, one
58 of which involved an offense classified as a felony under state
59 law.

60 (2) DUE PROCESS HEARING BEFORE A JUDGE.—Notwithstanding
61 any other law, and in all cases, any child charged with a crime
62 shall have an evidentiary hearing, after the state attorney's
63 filing of an information in adult court under this section.

64 (a) The judge shall conduct the hearing within 30 days,
65 excluding Saturdays, Sundays, and legal holidays, unless good

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66 cause is shown for a delay by the child or the child's attorney.
67 The purpose of the hearing is for the court to determine whether
68 it is necessary for protection of the community that the child
69 is prosecuted in adult court. The judge shall consider:
70 1. Evaluations and assessments completed by the
71 department.
72 2. The sophistication and maturity of the child,
73 including:
74 a. The effect, if any, of immaturity, impetuosity, or
75 failure to appreciate risks and consequences on the child's
76 participation in the offense.
77 b. The child's age, maturity, intellectual capacity, and
78 mental and emotional health at the time of the offense.
79 c. The effect, if any, of characteristics attributable to
80 the child's youth on the child's judgment.
81 3. The record and previous history of the child,
82 including:
83 a. Previous contacts with the department, the Department
84 of Corrections, the Department of Children and Families, other
85 law enforcement agencies, and the courts.
86 b. Prior periods of probation.
87 c. Prior adjudications that the child committed a
88 delinquent act or violation of law, with greater weight being
89 given if the child has previously been found by a court to have

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90 committed a delinquent act or violation of law involving
91 violence to persons.

92 d. Prior commitments to institutions of the department,
93 the Department of Corrections, or agencies under contract with
94 either department.

95 e. History of trauma, abuse or neglect, foster care
96 placements, failed adoption, fetal alcohol syndrome, exposure to
97 controlled substances at birth, and below average intellectual
98 functioning.

99 f. Identification of the child as a student requiring
100 exceptional student education or having previously received
101 psychological services.

102 g. Whether the child has previously been convicted and
103 sentenced as an adult.

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

106 a. Whether the offense is punishable by death or life
107 imprisonment.

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

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

111 d. The extent of the child's alleged participation in the
112 offense.

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

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

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

120 b. By the use of procedures, services, and facilities
121 currently available to the adult court, including whether the
122 lowest permissible sentence under the Criminal Punishment Code
123 is a nonstate prison sanction.

124 6. Cost-effective alternatives available to divert the
125 child from the criminal and juvenile justice systems and offer
126 rehabilitative services for the child.

127 7. Whether the child could obtain habilitative or
128 rehabilitative services available in the juvenile justice
129 system.

130 8. Whether the child could receive a sentence in juvenile
131 court that would provide adequate safety and protection for the
132 community.

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

135 (b) The judge may consider any reports that may assist the
136 court, including prior pre-disposition reports, psycho-social
137 assessments, individualized educational programs (IEPs),
138 developmental assessments, school records, abuse or neglect
139 reports, home studies, protective investigations, and

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140 psychological and psychiatric evaluations. The child, the
141 child's parents or legal guardians, defense counsel, and the
142 State Attorney, may examine these reports and question the
143 parties responsible for them at the hearing.

144 (c) The adult court shall retain jurisdiction unless the
145 court finds by a preponderance of evidence that the factors
146 listed in paragraph (a) support returning the child to juvenile
147 court.

148 (d) The adult court shall render an order including
149 specific findings of fact and the reasons for its decision. The
150 prosecution and defense may seek immediate review of the order
151 through interlocutory appeal. The order shall be reviewable on
152 appeal under s. 985.534 and the Florida Rules of Appellate
153 Procedure.

154 ~~(2) MANDATORY DIRECT FILE.~~

155 ~~(a) With respect to any child who was 16 or 17 years of~~
156 ~~age at the time the alleged offense was committed, the state~~
157 ~~attorney shall file an information if the child has been~~
158 ~~previously adjudicated delinquent for an act classified as a~~
159 ~~felony, which adjudication was for the commission of, attempt to~~
160 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~
161 ~~strong-armed robbery, carjacking, home-invasion robbery,~~
162 ~~aggravated battery, or aggravated assault, and the child is~~
163 ~~currently charged with a second or subsequent violent crime~~
164 ~~against a person.~~

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165 ~~(b) With respect to any child 16 or 17 years of age at the~~
166 ~~time an offense classified as a forcible felony, as defined in~~
167 ~~s. 776.08, was committed, the state attorney shall file an~~
168 ~~information if the child has previously been adjudicated~~
169 ~~delinquent or had adjudication withheld for three acts~~
170 ~~classified as felonies each of which occurred at least 45 days~~
171 ~~apart from each other. This paragraph does not apply when the~~
172 ~~state attorney has good cause to believe that exceptional~~
173 ~~circumstances exist which preclude the just prosecution of the~~
174 ~~child in adult court.~~

175 ~~(c) The state attorney must file an information if a~~
176 ~~child, regardless of the child's age at the time the alleged~~
177 ~~offense was committed, is alleged to have committed an act that~~
178 ~~would be a violation of law if the child were an adult, that~~
179 ~~involves stealing a motor vehicle, including, but not limited~~
180 ~~to, a violation of s. 812.133, relating to carjacking, or s.~~
181 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~
182 ~~while the child was in possession of the stolen motor vehicle~~
183 ~~the child caused serious bodily injury to or the death of a~~
184 ~~person who was not involved in the underlying offense. For~~
185 ~~purposes of this section, the driver and all willing passengers~~
186 ~~in the stolen motor vehicle at the time such serious bodily~~
187 ~~injury or death is inflicted shall also be subject to mandatory~~
188 ~~transfer to adult court. "Stolen motor vehicle," for the~~
189 ~~purposes of this section, means a motor vehicle that has been~~

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190 ~~the subject of any criminal wrongful taking. For purposes of~~
191 ~~this section, "willing passengers" means all willing passengers~~
192 ~~who have participated in the underlying offense.~~

193 ~~(d)1. With respect to any child who was 16 or 17 years of~~
194 ~~age at the time the alleged offense was committed, the state~~
195 ~~attorney shall file an information if the child has been charged~~
196 ~~with committing or attempting to commit an offense listed in s.~~
197 ~~775.087(2) (a)1.a. p., and, during the commission of or attempt~~
198 ~~to commit the offense, the child:~~

199 ~~a. Actually possessed a firearm or destructive device, as~~
200 ~~those terms are defined in s. 790.001.~~

201 ~~b. Discharged a firearm or destructive device, as~~
202 ~~described in s. 775.087(2) (a)2.~~

203 ~~e. Discharged a firearm or destructive device, as~~
204 ~~described in s. 775.087(2) (a)3., and, as a result of the~~
205 ~~discharge, death or great bodily harm was inflicted upon any~~
206 ~~person.~~

207 ~~2. Upon transfer, any child who is:~~

208 ~~a. Charged under sub-subparagraph 1.a. and who has been~~
209 ~~previously adjudicated or had adjudication withheld for a~~
210 ~~forcible felony offense or any offense involving a firearm, or~~
211 ~~who has been previously placed in a residential commitment~~
212 ~~program, shall be subject to sentencing under s. 775.087(2) (a),~~
213 ~~notwithstanding s. 985.565.~~

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214 ~~b. Charged under sub-subparagraph 1.b. or sub-subparagraph~~
215 ~~1.c., shall be subject to sentencing under s. 775.087(2)(a),~~
216 ~~notwithstanding s. 985.565.~~

217 ~~3. Upon transfer, any child who is charged under this~~
218 ~~paragraph, but who does not meet the requirements specified in~~
219 ~~subparagraph 2., shall be sentenced under s. 985.565; however,~~
220 ~~if the court imposes a juvenile sanction, the court must commit~~
221 ~~the child to a high risk or maximum risk juvenile facility.~~

222 ~~4. This paragraph shall not apply if the state attorney~~
223 ~~has good cause to believe that exceptional circumstances exist~~
224 ~~that preclude the just prosecution of the child in adult court.~~

225 ~~5. The Department of Corrections shall make every~~
226 ~~reasonable effort to ensure that any child 16 or 17 years of age~~
227 ~~who is convicted and sentenced under this paragraph be~~
228 ~~completely separated such that there is no physical contact with~~
229 ~~adult offenders in the facility, to the extent that it is~~
230 ~~consistent with chapter 958.~~

231 Section 2. Subsection (5) of section 985.265, Florida
232 Statutes, is renumbered as subsection (6) and amended, and a new
233 subsection (5) is added to that section, to read:

234 985.265 Detention transfer and release; education; adult
235 jails.-

236 (5) Notwithstanding any other provision of law, a child
237 subject to direct file shall not be held in a jail or other
238 facility intended or used for the detention of adults prior to a

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239 | court finding as a result of a hearing provided for in s.
240 | 985.557(2) that the child should be prosecuted as an adult.

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

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243 | **T I T L E A M E N D M E N T**

244 | Remove lines 5-12 and insert:

245 | revising discretionary direct file criteria; deleting
246 | provisions for mandatory direct file; providing for an
247 | opportunity for a hearing to reverse a direct file;
248 | amending s. 985.265, F.S.; revising provisions
249 | concerning the housing of children held in detention;