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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2019	.	
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The Committee on Criminal Justice (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete 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



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11 at the time the alleged offense was committed, the state
12 attorney may file an information when ~~in the state attorney's~~
13 ~~judgment and discretion~~ the public interest requires that adult
14 sanctions be considered or imposed and when the offense charged
15 is for the commission of, or attempt to commit any of the
16 following ~~, or conspiracy to commit:~~

- 17 1. Arson.†
- 18 2. Sexual battery.†
- 19 3. Robbery.†
- 20 4. Kidnapping.†
- 21 5. Aggravated child abuse.†
- 22 6. Aggravated assault.†
- 23 7. Aggravated stalking.†
- 24 8. Murder.†
- 25 9. Manslaughter.†
- 26 10. Unlawful throwing, placing, or discharging of a
27 destructive device or bomb.†
- 28 11. Armed burglary in violation of s. 810.02(2)(b) or
29 specified burglary of a dwelling or structure in violation of s.
30 810.02(2)(c), or burglary with an assault or battery in
31 violation of s. 810.02(2)(a).†
- 32 12. Aggravated battery.†
- 33 13. Any lewd or lascivious offense committed upon or in the
34 presence of a person less than 16 years of age.†
- 35 14. Carrying, displaying, using, threatening, or attempting
36 to use a weapon or firearm during the commission of a felony.†
- 37 15. Grand theft in violation of s. 812.014(2)(a).†
- 38 16. Possessing or discharging any weapon or firearm on
39 school property in violation of s. 790.115.†



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40 17. Home invasion robbery.~~†~~

41 18. Carjacking.~~†~~~~or~~

42 19. Grand theft of a motor vehicle in violation of s.
43 812.014(2)(c)6. or grand theft of a motor vehicle valued at
44 \$20,000 or more in violation of s. 812.014(2)(b) if the child
45 has a previous adjudication for grand theft of a motor vehicle
46 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

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

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

61 (a) The judge shall conduct the hearing within 30 days,
62 excluding Saturdays, Sundays, and legal holidays, unless good
63 cause is shown for a delay by the child or the child's attorney.
64 The purpose of the hearing is for the court to determine whether
65 it is necessary for protection of the community that the child
66 is prosecuted in adult court. The judge shall consider:

- 67 1. Evaluations and assessments completed by the department.
68 2. The sophistication and maturity of the child, including:



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69 a. The effect, if any, of immaturity, impetuosity, or
70 failure to appreciate risks and consequences on the child's
71 participation in the alleged offense.

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

74 c. The effect, if any, of characteristics attributable to
75 the child's youth on the child's judgment.

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

77 a. Previous contacts with the department, the Department of
78 Corrections, the Department of Children and Families, other law
79 enforcement agencies, and the courts.

80 b. Prior periods of probation.

81 c. Prior adjudications that the child committed a
82 delinquent act or violation of law, with greater weight being
83 given if the child has previously been found by a court to have
84 committed a delinquent act or violation of law involving
85 violence to persons.

86 d. Prior commitments to institutions of the department, the
87 Department of Corrections, or agencies under contract with
88 either department.

89 e. History of trauma, abuse or neglect, foster care
90 placements, failed adoption, fetal alcohol syndrome, exposure to
91 controlled substances at birth, and below-average intellectual
92 functioning.

93 f. Identification of the child as a student requiring
94 exceptional student education or having previously received
95 psychological services.

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



98 a. Whether the alleged offense is punishable by death or
99 life imprisonment.

100 b. Whether the alleged offense was against persons or
101 property.

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

104 d. The extent of the child's participation in the alleged
105 offense.

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

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

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

113 b. By the use of procedures, services, and facilities
114 currently available to the adult court, including whether the
115 lowest permissible sentence under the Criminal Punishment Code
116 is a nonstate prison sanction.

117 6. Whether the child could obtain habilitative or
118 rehabilitative services available in the juvenile justice
119 system.

120 7. Whether the child could receive a sentence in juvenile
121 court that would provide adequate safety and protection for the
122 community.

123 8. Whether the child's best interests would be served by
124 prosecuting the child in juvenile court.

125 (b) The judge may consider any reports that may assist the
126 court, including prior pre-disposition reports, psycho-social



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127 assessments, individualized educational programs (IEPs),
128 developmental assessments, school records, abuse or neglect
129 reports, home studies, protective investigations, and
130 psychological and psychiatric evaluations. The child, the
131 child's parents or legal guardians, defense counsel, and the
132 state attorney may examine these reports and question the
133 parties responsible for creating them at the hearing.

134 (c) The adult court shall retain jurisdiction unless the
135 court finds by a preponderance of the evidence that the factors
136 listed in paragraph (a) support returning the child to juvenile
137 court.

138 (d) The adult court shall render an order including
139 specific findings of fact and the reasons for its decision. The
140 prosecution and defense may seek immediate review of the order
141 through interlocutory appeal. The order shall be reviewable on
142 appeal under the Florida Rules of Appellate Procedure.

143 ~~(2) MANDATORY DIRECT FILE.—~~

144 ~~(a) With respect to any child who was 16 or 17 years of age~~
145 ~~at the time the alleged offense was committed, the state~~
146 ~~attorney shall file an information if the child has been~~
147 ~~previously adjudicated delinquent for an act classified as a~~
148 ~~felony, which adjudication was for the commission of, attempt to~~
149 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~
150 ~~strong-armed robbery, carjacking, home-invasion robbery,~~
151 ~~aggravated battery, or aggravated assault, and the child is~~
152 ~~currently charged with a second or subsequent violent crime~~
153 ~~against a person.~~

154 ~~(b) With respect to any child 16 or 17 years of age at the~~
155 ~~time an offense classified as a forcible felony, as defined in~~



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156 ~~s. 776.08, was committed, the state attorney shall file an~~
157 ~~information if the child has previously been adjudicated~~
158 ~~delinquent or had adjudication withheld for three acts~~
159 ~~classified as felonies each of which occurred at least 45 days~~
160 ~~apart from each other. This paragraph does not apply when the~~
161 ~~state attorney has good cause to believe that exceptional~~
162 ~~circumstances exist which preclude the just prosecution of the~~
163 ~~juvenile in adult court.~~

164 ~~(c) The state attorney must file an information if a child,~~
165 ~~regardless of the child's age at the time the alleged offense~~
166 ~~was committed, is alleged to have committed an act that would be~~
167 ~~a violation of law if the child were an adult, that involves~~
168 ~~stealing a motor vehicle, including, but not limited to, a~~
169 ~~violation of s. 812.133, relating to carjacking, or s.~~
170 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~
171 ~~while the child was in possession of the stolen motor vehicle~~
172 ~~the child caused serious bodily injury to or the death of a~~
173 ~~person who was not involved in the underlying offense. For~~
174 ~~purposes of this section, the driver and all willing passengers~~
175 ~~in the stolen motor vehicle at the time such serious bodily~~
176 ~~injury or death is inflicted shall also be subject to mandatory~~
177 ~~transfer to adult court. "Stolen motor vehicle," for the~~
178 ~~purposes of this section, means a motor vehicle that has been~~
179 ~~the subject of any criminal wrongful taking. For purposes of~~
180 ~~this section, "willing passengers" means all willing passengers~~
181 ~~who have participated in the underlying offense.~~

182 ~~(d)1. With respect to any child who was 16 or 17 years of~~
183 ~~age at the time the alleged offense was committed, the state~~
184 ~~attorney shall file an information if the child has been charged~~



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185 ~~with committing or attempting to commit an offense listed in s.~~
186 ~~775.087(2)(a)1.a.-p., and, during the commission of or attempt~~
187 ~~to commit the offense, the child:~~

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

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

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

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

196 ~~a. Charged under sub-subparagraph 1.a. and who has been~~
197 ~~previously adjudicated or had adjudication withheld for a~~
198 ~~forcible felony offense or any offense involving a firearm, or~~
199 ~~who has been previously placed in a residential commitment~~
200 ~~program, shall be subject to sentencing under s. 775.087(2)(a),~~
201 ~~notwithstanding s. 985.565.~~

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

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

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

213 ~~5. The Department of Corrections shall make every~~



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214 ~~reasonable effort to ensure that any child 16 or 17 years of age~~
215 ~~who is convicted and sentenced under this paragraph be~~
216 ~~completely separated such that there is no physical contact with~~
217 ~~adult offenders in the facility, to the extent that it is~~
218 ~~consistent with chapter 958.~~

219 Section 2. Subsection (5) of section 985.265, Florida
220 Statutes, is amended to read

221 985.265 Detention transfer and release; education; adult
222 jails.—

223 (5) The court shall order the delivery of a child to a jail
224 or other facility intended or used for the detention of adults:

225 (a) When the child has been transferred or indicted for
226 criminal prosecution as an adult under part X, except that:

227 1. The court may not order or allow a child alleged to have
228 committed a misdemeanor who is being transferred for criminal
229 prosecution pursuant to either s. 985.556 or s. 985.557 to be
230 detained or held in a jail or other facility intended or used
231 for the detention of adults; however, such child may be held
232 temporarily in a detention facility; or

233 2. A child who has been transferred for criminal
234 prosecution as an adult pursuant to s. 985.557 shall not be held
235 in a jail or other facility intended or used for the detention
236 of adults prior to a court finding as a result of a hearing
237 provided for in s. 985.557(2) that the child should be
238 prosecuted as an adult; or

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

241
242 The child shall be housed separately from adult inmates to



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243 prohibit a child from having regular contact with incarcerated
244 adults, including trustees. "Regular contact" means sight and
245 sound contact. Separation of children from adults shall permit
246 no more than haphazard or accidental contact. The receiving jail
247 or other facility shall contain a separate section for children
248 and shall have an adequate staff to supervise and monitor the
249 child's activities at all times. Supervision and monitoring of
250 children includes physical observation and documented checks by
251 jail or receiving facility supervisory personnel at intervals
252 not to exceed 10 minutes. This subsection does not prohibit
253 placing two or more children in the same cell. Under no
254 circumstances shall a child be placed in the same cell with an
255 adult.

256 Section 3. Paragraphs (a) and (b) of subsection (4) of
257 section 985.565, Florida Statutes, are amended to read

258 985.565 Sentencing powers; procedures; alternatives for
259 juveniles prosecuted as adults.-

260 (4) SENTENCING ALTERNATIVES.-

261 (a) *Adult sanctions*.-

262 1. Cases prosecuted on indictment.-If the child is found to
263 have committed the offense punishable by death or life
264 imprisonment, the child shall be sentenced as an adult. If the
265 juvenile is not found to have committed the indictable offense
266 but is found to have committed a lesser included offense or any
267 other offense for which he or she was indicted as a part of the
268 criminal episode, the court may sentence as follows:

269 a. As an adult;

270 b. Under chapter 958; or

271 c. As a juvenile under this section.



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

- 278 a. As an adult;
- 279 b. Under chapter 958; or
- 280 c. As a juvenile under this section.

281 3. Notwithstanding any other provision to the contrary, if
282 the state attorney is required to file a motion to transfer and
283 certify the juvenile for prosecution as an adult under s.
284 985.556(3) and that motion is granted, ~~or if the state attorney~~
285 ~~is required to file an information under s. 985.557(2) (a) or~~
286 ~~(b)~~, the court must impose adult sanctions.

287 4. Any sentence imposing adult sanctions is presumed
288 appropriate, and the court is not required to set forth specific
289 findings or enumerate the criteria in this subsection as any
290 basis for its decision to impose adult sanctions.

291 5. When a child has been transferred for criminal
292 prosecution as an adult and has been found to have committed a
293 violation of state law, the disposition of the case may include
294 the enforcement of any restitution ordered in any juvenile
295 proceeding.

296 (b) *Juvenile sanctions*.—For juveniles transferred to adult
297 court but who do not qualify for such transfer under s.
298 985.556(3) ~~or s. 985.557(2) (a) or (b)~~, the court may impose
299 juvenile sanctions under this paragraph. If juvenile sentences
300 are imposed, the court shall, under this paragraph, adjudge the



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301 child to have committed a delinquent act. Adjudication of
302 delinquency shall not be deemed a conviction, nor shall it
303 operate to impose any of the civil disabilities ordinarily
304 resulting from a conviction. The court shall impose an adult
305 sanction or a juvenile sanction and may not sentence the child
306 to a combination of adult and juvenile punishments. An adult
307 sanction or a juvenile sanction may include enforcement of an
308 order of restitution or probation previously ordered in any
309 juvenile proceeding. However, if the court imposes a juvenile
310 sanction and the department determines that the sanction is
311 unsuitable for the child, the department shall return custody of
312 the child to the sentencing court for further proceedings,
313 including the imposition of adult sanctions. Upon adjudicating a
314 child delinquent under subsection (1), the court may:

315 1. Place the child in a probation program under the
316 supervision of the department for an indeterminate period of
317 time until the child reaches the age of 19 years or sooner if
318 discharged by order of the court.

319 2. Commit the child to the department for treatment in an
320 appropriate program for children for an indeterminate period of
321 time until the child is 21 or sooner if discharged by the
322 department. The department shall notify the court of its intent
323 to discharge no later than 14 days prior to discharge. Failure
324 of the court to timely respond to the department's notice shall
325 be considered approval for discharge.

326 3. Order disposition under ss. 985.435, 985.437, 985.439,
327 985.441, 985.45, and 985.455 as an alternative to youthful
328 offender or adult sentencing if the court determines not to
329 impose youthful offender or adult sanctions.



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330
331 It is the intent of the Legislature that the criteria and
332 guidelines in this subsection are mandatory and that a
333 determination of disposition under this subsection is subject to
334 the right of the child to appellate review under s. 985.534.

335 Section 4. This act shall take effect July 1, 2019.

336 ===== T I T L E A M E N D M E N T =====

337 And the title is amended as follows:

338 Delete everything before the enacting clause
339 and insert:

340 A bill to be entitled
341 An act relating to direct filing of an information;
342 amending s. 985.557, F.S.; deleting references to the
343 state attorney's discretion to direct file a juvenile;
344 revising discretionary direct file criteria; deleting
345 provisions for mandatory direct file; providing for an
346 opportunity for a hearing to reverse a direct file;
347 amending s. 985.265, F.S.; revising provisions
348 concerning the housing of children held in detention;
349 prohibiting a child who has been transferred to adult
350 court for criminal prosecution pursuant to direct file
351 from being held in a jail or other facility used for
352 the detention of adults prior to a hearing to
353 determine if the child should remain in adult court;
354 amending s. 985.565, F.S.; conforming provisions to
355 changes made by the act; providing an effective date.