

By the Committee on Criminal Justice; and Senator Powell

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1 A bill to be entitled  
2 An act relating to direct filing of an information;  
3 amending s. 985.265, F.S.; revising provisions  
4 concerning the housing of children held in detention;  
5 prohibiting a child who has been transferred to adult  
6 court for criminal prosecution pursuant to direct file  
7 from being held in a jail or other facility used for  
8 the detention of adults prior to a hearing to  
9 determine if the child should remain in adult court;  
10 amending s. 985.557, F.S.; deleting references to the  
11 state attorney's discretion to direct file a juvenile;  
12 revising discretionary direct file criteria; deleting  
13 provisions for mandatory direct file; providing for an  
14 opportunity for a hearing to reverse a direct file;  
15 amending s. 985.565, F.S.; conforming provisions to  
16 changes made by the act; reenacting ss. 985.15(1),  
17 985.26(2)(c), and 985.556(3), F.S., relating to filing  
18 decisions, length of detention, and involuntary  
19 mandatory waiver, respectively, to incorporate the  
20 amendment made to s. 985.557, F.S., in references  
21 thereto; providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. Subsection (5) of section 985.265, Florida  
26 Statutes, is amended to read

27 985.265 Detention transfer and release; education; adult  
28 jails.-

29 (5) The court shall order the delivery of a child to a jail

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30 or other facility intended or used for the detention of adults:

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

33 1. The court may not order or allow a child alleged to have  
34 committed a misdemeanor who is being transferred for criminal  
35 prosecution pursuant to either s. 985.556 or s. 985.557 to be  
36 detained or held in a jail or other facility intended or used  
37 for the detention of adults; however, such child may be held  
38 temporarily in a detention facility; or

39 2. A child who has been transferred for criminal  
40 prosecution as an adult pursuant to s. 985.557 shall not be held  
41 in a jail or other facility intended or used for the detention  
42 of adults prior to a court finding as a result of a hearing  
43 provided for in s. 985.557(2) that the child should be  
44 prosecuted as an adult; or

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

47  
48 The child shall be housed separately from adult inmates to  
49 prohibit a child from having regular contact with incarcerated  
50 adults, including trustees. "Regular contact" means sight and  
51 sound contact. Separation of children from adults shall permit  
52 no more than haphazard or accidental contact. The receiving jail  
53 or other facility shall contain a separate section for children  
54 and shall have an adequate staff to supervise and monitor the  
55 child's activities at all times. Supervision and monitoring of  
56 children includes physical observation and documented checks by  
57 jail or receiving facility supervisory personnel at intervals  
58 not to exceed 10 minutes. This subsection does not prohibit

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59 placing two or more children in the same cell. Under no  
60 circumstances shall a child be placed in the same cell with an  
61 adult.

62 Section 2. Subsection (1) and present subsection (2) of  
63 section 985.557, Florida Statutes, are amended, and a new  
64 subsection (2) is added to that section, to read:

65 985.557 Direct filing of an information; discretionary ~~and~~  
66 ~~mandatory~~ criteria.—

67 (1) DISCRETIONARY DIRECT FILE.—

68 (a) With respect to any child who was 14 or 15 years of age  
69 at the time the alleged offense was committed, the state  
70 attorney may file an information when ~~in the state attorney's~~  
71 ~~judgment and discretion~~ the public interest requires that adult  
72 sanctions be considered or imposed and when the offense charged  
73 is for the commission of, or attempt to commit any of the  
74 following ~~, or conspiracy to commit:~~

- 75 1. Arson.†
- 76 2. Sexual battery.†
- 77 3. Robbery.†
- 78 4. Kidnapping.†
- 79 5. Aggravated child abuse.†
- 80 6. Aggravated assault.†
- 81 7. Aggravated stalking.†
- 82 8. Murder.†
- 83 9. Manslaughter.†
- 84 10. Unlawful throwing, placing, or discharging of a  
85 destructive device or bomb.†
- 86 11. Armed burglary in violation of s. 810.02(2)(b) or  
87 specified burglary of a dwelling or structure in violation of s.

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88 810.02(2)(c), or burglary with an assault or battery in  
89 violation of s. 810.02(2)(a).†

90 12. Aggravated battery.†

91 13. Any lewd or lascivious offense committed upon or in the  
92 presence of a person less than 16 years of age~~†~~

93 14. Carrying, displaying, using, threatening, or attempting  
94 to use a weapon or firearm during the commission of a felony.†

95 15. Grand theft in violation of s. 812.014(2)(a).†

96 16. Possessing or discharging any weapon or firearm on  
97 school property in violation of s. 790.115.†

98 17. Home invasion robbery.†

99 18. Carjacking.~~† or~~

100 19. Grand theft of a motor vehicle in violation of s.  
101 812.014(2)(c)6. or grand theft of a motor vehicle valued at  
102 \$20,000 or more in violation of s. 812.014(2)(b) if the child  
103 has a previous adjudication for grand theft of a motor vehicle  
104 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

105 (b) With respect to any child who was 16 or 17 years of age  
106 at the time the alleged offense was committed, the state  
107 attorney may file an information when ~~in the state attorney's~~  
108 ~~judgment and discretion~~ the public interest requires that adult  
109 sanctions be considered or imposed. However, the state attorney  
110 may not file an information on a child charged with a  
111 misdemeanor, unless the child has had at least two previous  
112 adjudications ~~or adjudications withheld~~ for delinquent acts, one  
113 of which involved an offense classified as a felony under state  
114 law.

115 (2) DUE PROCESS HEARING BEFORE A JUDGE.—Notwithstanding any  
116 other law, and in all cases, any child charged with a crime

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117 shall have an evidentiary hearing, after the state attorney's  
118 filing of an information in adult court under this section.

119 (a) The judge shall conduct the hearing within 30 days,  
120 excluding Saturdays, Sundays, and legal holidays, unless good  
121 cause is shown for a delay by the child or the child's attorney.  
122 The purpose of the hearing is for the court to determine whether  
123 it is necessary for protection of the community that the child  
124 is prosecuted in adult court. The judge shall consider all of  
125 the following:

126 1. Evaluations and assessments completed by the department.

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

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

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

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

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

136 a. Previous contacts with the department, the Department of  
137 Corrections, the Department of Children and Families, other law  
138 enforcement agencies, and the courts.

139 b. Prior periods of probation.

140 c. Prior adjudications that the child committed a  
141 delinquent act or violation of law, with greater weight being  
142 given if the child has previously been found by a court to have  
143 committed a delinquent act or violation of law involving  
144 violence to persons.

145 d. Prior commitments to institutions of the department, the

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146 Department of Corrections, or agencies under contract with  
147 either department.

148 e. History of trauma, abuse or neglect, foster care  
149 placements, failed adoption, fetal alcohol syndrome, exposure to  
150 controlled substances at birth, and below-average intellectual  
151 functioning.

152 f. Identification of the child as a student requiring  
153 exceptional student education or having previously received  
154 psychological services.

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

157 a. Whether the alleged offense is punishable by death or  
158 life imprisonment.

159 b. Whether the alleged offense was against persons or  
160 property.

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

163 d. The extent of the child's participation in the alleged  
164 offense.

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

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

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

172 b. By the use of procedures, services, and facilities  
173 currently available to the adult court, including whether the  
174 lowest permissible sentence under the Criminal Punishment Code

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175 is a nonstate prison sanction.

176 6. Whether the child could obtain habilitative or  
177 rehabilitative services available in the juvenile justice  
178 system.

179 7. Whether the child could receive a sentence in juvenile  
180 court that would provide adequate safety and protection for the  
181 community.

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

184 (b) The judge may consider any reports that may assist the  
185 court, including prior pre-disposition reports, psycho-social  
186 assessments, individualized educational programs (IEPs),  
187 developmental assessments, school records, abuse or neglect  
188 reports, home studies, protective investigations, and  
189 psychological and psychiatric evaluations. The child, the  
190 child's parents or legal guardians, defense counsel, and the  
191 state attorney may examine these reports and question the  
192 parties responsible for creating them at the hearing.

193 (c) The adult court shall retain jurisdiction unless the  
194 court finds by a preponderance of the evidence that the factors  
195 listed in paragraph (a) support returning the child to juvenile  
196 court.

197 (d) The adult court shall render an order including  
198 specific findings of fact and the reasons for its decision. The  
199 prosecution and defense may seek immediate review of the order  
200 through interlocutory appeal. The order shall be reviewable on  
201 appeal under the Florida Rules of Appellate Procedure.

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

203 ~~(a) With respect to any child who was 16 or 17 years of age~~

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204 ~~at the time the alleged offense was committed, the state~~  
205 ~~attorney shall file an information if the child has been~~  
206 ~~previously adjudicated delinquent for an act classified as a~~  
207 ~~felony, which adjudication was for the commission of, attempt to~~  
208 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~  
209 ~~strong-armed robbery, carjacking, home invasion robbery,~~  
210 ~~aggravated battery, or aggravated assault, and the child is~~  
211 ~~currently charged with a second or subsequent violent crime~~  
212 ~~against a person.~~

213 ~~(b) With respect to any child 16 or 17 years of age at the~~  
214 ~~time an offense classified as a forcible felony, as defined in~~  
215 ~~s. 776.08, was committed, the state attorney shall file an~~  
216 ~~information if the child has previously been adjudicated~~  
217 ~~delinquent or had adjudication withheld for three acts~~  
218 ~~classified as felonies each of which occurred at least 45 days~~  
219 ~~apart from each other. This paragraph does not apply when the~~  
220 ~~state attorney has good cause to believe that exceptional~~  
221 ~~circumstances exist which preclude the just prosecution of the~~  
222 ~~juvenile in adult court.~~

223 ~~(c) The state attorney must file an information if a child,~~  
224 ~~regardless of the child's age at the time the alleged offense~~  
225 ~~was committed, is alleged to have committed an act that would be~~  
226 ~~a violation of law if the child were an adult, that involves~~  
227 ~~stealing a motor vehicle, including, but not limited to, a~~  
228 ~~violation of s. 812.133, relating to carjacking, or s.~~  
229 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~  
230 ~~while the child was in possession of the stolen motor vehicle~~  
231 ~~the child caused serious bodily injury to or the death of a~~  
232 ~~person who was not involved in the underlying offense. For~~



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233 ~~purposes of this section, the driver and all willing passengers~~  
234 ~~in the stolen motor vehicle at the time such serious bodily~~  
235 ~~injury or death is inflicted shall also be subject to mandatory~~  
236 ~~transfer to adult court. "Stolen motor vehicle," for the~~  
237 ~~purposes of this section, means a motor vehicle that has been~~  
238 ~~the subject of any criminal wrongful taking. For purposes of~~  
239 ~~this section, "willing passengers" means all willing passengers~~  
240 ~~who have participated in the underlying offense.~~

241 ~~(d)1. With respect to any child who was 16 or 17 years of~~  
242 ~~age at the time the alleged offense was committed, the state~~  
243 ~~attorney shall file an information if the child has been charged~~  
244 ~~with committing or attempting to commit an offense listed in s.~~  
245 ~~775.087(2)(a)1.a.-p., and, during the commission of or attempt~~  
246 ~~to commit the offense, the child:~~

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

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

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

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

255 ~~a. Charged under sub-subparagraph 1.a. and who has been~~  
256 ~~previously adjudicated or had adjudication withheld for a~~  
257 ~~forcible felony offense or any offense involving a firearm, or~~  
258 ~~who has been previously placed in a residential commitment~~  
259 ~~program, shall be subject to sentencing under s. 775.087(2)(a),~~  
260 ~~notwithstanding s. 985.565.~~

261 ~~b. Charged under sub-subparagraph 1.b. or sub-subparagraph~~

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262 ~~1.c., shall be subject to sentencing under s. 775.087(2)(a),~~  
263 ~~notwithstanding s. 985.565.~~

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

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

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

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

280 985.565 Sentencing powers; procedures; alternatives for  
281 juveniles prosecuted as adults.—

282 (4) SENTENCING ALTERNATIVES.—

283 (a) *Adult sanctions*.—

284 1. Cases prosecuted on indictment.—If the child is found to  
285 have committed the offense punishable by death or life  
286 imprisonment, the child shall be sentenced as an adult. If the  
287 juvenile is not found to have committed the indictable offense  
288 but is found to have committed a lesser included offense or any  
289 other offense for which he or she was indicted as a part of the  
290 criminal episode, the court may sentence as follows:

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- 291 a. As an adult;
- 292 b. Under chapter 958; or
- 293 c. As a juvenile under this section.
- 294 2. Other cases.—If a child who has been transferred for
- 295 criminal prosecution pursuant to information or waiver of
- 296 juvenile court jurisdiction is found to have committed a
- 297 violation of state law or a lesser included offense for which he
- 298 or she was charged as a part of the criminal episode, the court
- 299 may sentence as follows:
- 300 a. As an adult;
- 301 b. Under chapter 958; or
- 302 c. As a juvenile under this section.
- 303 3. Notwithstanding any other provision to the contrary, if
- 304 the state attorney is required to file a motion to transfer and
- 305 certify the juvenile for prosecution as an adult under s.
- 306 985.556(3) and that motion is granted, ~~or if the state attorney~~
- 307 ~~is required to file an information under s. 985.557(2)(a) or~~
- 308 ~~(b)~~, the court must impose adult sanctions.
- 309 4. Any sentence imposing adult sanctions is presumed
- 310 appropriate, and the court is not required to set forth specific
- 311 findings or enumerate the criteria in this subsection as any
- 312 basis for its decision to impose adult sanctions.
- 313 5. When a child has been transferred for criminal
- 314 prosecution as an adult and has been found to have committed a
- 315 violation of state law, the disposition of the case may include
- 316 the enforcement of any restitution ordered in any juvenile
- 317 proceeding.
- 318 (b) *Juvenile sanctions*.—For juveniles transferred to adult
- 319 court but who do not qualify for such transfer under s.

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320 985.556(3) ~~or s. 985.557(2)(a) or (b)~~, the court may impose  
321 juvenile sanctions under this paragraph. If juvenile sentences  
322 are imposed, the court shall, under this paragraph, adjudge the  
323 child to have committed a delinquent act. Adjudication of  
324 delinquency shall not be deemed a conviction, nor shall it  
325 operate to impose any of the civil disabilities ordinarily  
326 resulting from a conviction. The court shall impose an adult  
327 sanction or a juvenile sanction and may not sentence the child  
328 to a combination of adult and juvenile punishments. An adult  
329 sanction or a juvenile sanction may include enforcement of an  
330 order of restitution or probation previously ordered in any  
331 juvenile proceeding. However, if the court imposes a juvenile  
332 sanction and the department determines that the sanction is  
333 unsuitable for the child, the department shall return custody of  
334 the child to the sentencing court for further proceedings,  
335 including the imposition of adult sanctions. Upon adjudicating a  
336 child delinquent under subsection (1), the court may:

337 1. Place the child in a probation program under the  
338 supervision of the department for an indeterminate period of  
339 time until the child reaches the age of 19 years or sooner if  
340 discharged by order of the court.

341 2. Commit the child to the department for treatment in an  
342 appropriate program for children for an indeterminate period of  
343 time until the child is 21 or sooner if discharged by the  
344 department. The department shall notify the court of its intent  
345 to discharge no later than 14 days prior to discharge. Failure  
346 of the court to timely respond to the department's notice shall  
347 be considered approval for discharge.

348 3. Order disposition under ss. 985.435, 985.437, 985.439,

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349 985.441, 985.45, and 985.455 as an alternative to youthful  
350 offender or adult sentencing if the court determines not to  
351 impose youthful offender or adult sanctions.

352

353 It is the intent of the Legislature that the criteria and  
354 guidelines in this subsection are mandatory and that a  
355 determination of disposition under this subsection is subject to  
356 the right of the child to appellate review under s. 985.534.

357 Section 4. For the purpose of incorporating the amendment  
358 made by this act to section 985.557, Florida Statutes, in a  
359 reference thereto, subsection (1) of section 985.15, Florida  
360 Statutes, is reenacted to read:

361 985.15 Filing decisions.—

362 (1) The state attorney may in all cases take action  
363 independent of the action or lack of action of the juvenile  
364 probation officer and shall determine the action that is in the  
365 best interest of the public and the child. If the child meets  
366 the criteria requiring prosecution as an adult under s. 985.556,  
367 the state attorney shall request the court to transfer and  
368 certify the child for prosecution as an adult or shall provide  
369 written reasons to the court for not making such a request. In  
370 all other cases, the state attorney may:

371 (a) File a petition for dependency;

372 (b) File a petition under chapter 984;

373 (c) File a petition for delinquency;

374 (d) File a petition for delinquency with a motion to  
375 transfer and certify the child for prosecution as an adult;

376 (e) File an information under s. 985.557;

377 (f) Refer the case to a grand jury;

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378 (g) Refer the child to a diversionary, pretrial  
379 intervention, arbitration, or mediation program, or to some  
380 other treatment or care program if such program commitment is  
381 voluntarily accepted by the child or the child's parents or  
382 legal guardian; or

383 (h) Decline to file.

384 Section 5. For the purpose of incorporating the amendment  
385 made by this act to section 985.557, Florida Statutes, in a  
386 reference thereto, paragraph (c) of subsection (2) of section  
387 985.26, Florida Statutes, is reenacted to read:

388 985.26 Length of detention.—

389 (2)

390 (c) A prolific juvenile offender under s. 985.255(1)(j)  
391 shall be placed on nonsecure detention care with electronic  
392 monitoring or in secure detention care under a special detention  
393 order until disposition. If secure detention care is ordered by  
394 the court, it must be authorized under this part and may not  
395 exceed:

396 1. Twenty-one days unless an adjudicatory hearing for the  
397 case has been commenced in good faith by the court or the period  
398 is extended by the court pursuant to paragraph (b); or

399 2. Fifteen days after the entry of an order of  
400 adjudication.

401  
402 As used in this paragraph, the term "disposition" means a  
403 declination to file under s. 985.15(1)(h), the entry of nolle  
404 prosequi for the charges, the filing of an indictment under s.  
405 985.56 or an information under s. 985.557, a dismissal of the  
406 case, or an order of final disposition by the court.

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407 Section 6. For the purpose of incorporating the amendment  
408 made by this act to section 985.557, Florida Statutes, in a  
409 reference thereto, subsection (3) of section 985.556, Florida  
410 Statutes, is reenacted to read:

411 985.556 Waiver of juvenile court jurisdiction; hearing.—

412 (3) INVOLUNTARY MANDATORY WAIVER.—

413 (a) If the child was 14 years of age or older, and if the  
414 child has been previously adjudicated delinquent for an act  
415 classified as a felony, which adjudication was for the  
416 commission of, attempt to commit, or conspiracy to commit  
417 murder, sexual battery, armed or strong-armed robbery,  
418 carjacking, home-invasion robbery, aggravated battery,  
419 aggravated assault, or burglary with an assault or battery, and  
420 the child is currently charged with a second or subsequent  
421 violent crime against a person; or

422 (b) If the child was 14 years of age or older at the time  
423 of commission of a fourth or subsequent alleged felony offense  
424 and the child was previously adjudicated delinquent or had  
425 adjudication withheld for or was found to have committed, or to  
426 have attempted or conspired to commit, three offenses that are  
427 felony offenses if committed by an adult, and one or more of  
428 such felony offenses involved the use or possession of a firearm  
429 or violence against a person;

430

431 the state attorney shall request the court to transfer and  
432 certify the child for prosecution as an adult or shall provide  
433 written reasons to the court for not making such request, or  
434 proceed under s. 985.557(1). Upon the state attorney's request,  
435 the court shall either enter an order transferring the case and

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436 certifying the case for trial as if the child were an adult or  
437 provide written reasons for not issuing such an order.

438 Section 7. This act shall take effect July 1, 2019.