

1                                   A bill to be entitled  
 2           An act relating to direct filing of an information;  
 3           amending s. 985.557, F.S.; deleting references to the  
 4           state attorney's discretion to direct file a juvenile;  
 5           revising discretionary direct file criteria; providing  
 6           for an opportunity for a hearing to reverse a direct  
 7           file; amending s. 985.265, F.S.; revising provisions  
 8           concerning the housing of children held in detention;  
 9           providing an effective date.

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

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

985.557 Direct filing of an information; discretionary 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 is for the commission of or, attempt to commit, ~~or conspiracy to~~ ~~commit~~:

1. Arson;

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

51           19. Grand theft of a motor vehicle in violation of s.  
52 812.014(2)(c)6. or grand theft of a motor vehicle valued at  
53 \$20,000 or more in violation of s. 812.014(2)(b) if the child  
54 has a previous adjudication for grand theft of a motor vehicle  
55 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

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

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

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

76        1. Evaluations and assessments completed by the  
77 department.

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

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

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

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

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

89            a. Previous contacts with the department, the Department  
90 of Corrections, the Department of Children and Families, other  
91 law enforcement agencies, and the courts.

92            b. Prior periods of probation.

93            c. Prior adjudications that the child committed a  
94 delinquent act or violation of law, with greater weight being  
95 given if the child has previously been found by a court to have  
96 committed a delinquent act or violation of law involving  
97 violence to persons.

98            d. Prior commitments to institutions of the department,  
99 the Department of Corrections, or agencies under contract with  
100 either department.

101 e. History of trauma, abuse or neglect, foster care  
102 placements, failed adoption, fetal alcohol syndrome, exposure to  
103 controlled substances at birth, and below average intellectual  
104 functioning.

105 f. Identification of the child as a student requiring  
106 exceptional student education or having previously received  
107 psychological services.

108 g. Whether the child has previously been convicted and  
109 sentenced as an adult.

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

112 a. Whether the offense is punishable by death or life  
113 imprisonment.

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

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

117 d. The extent of the child's alleged participation in the  
118 offense.

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

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

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

126 b. By the use of procedures, services, and facilities  
127 currently available to the adult court, including whether the  
128 lowest permissible sentence under the Criminal Punishment Code  
129 is a nonstate prison sanction.

130 6. Cost-effective alternatives available to divert the  
131 child from the criminal and juvenile justice systems and offer  
132 rehabilitative services for the child.

133 7. Whether the child could obtain habilitative or  
134 rehabilitative services available in the juvenile justice  
135 system.

136 8. Whether the child could receive a sentence in juvenile  
137 court that would provide adequate safety and protection for the  
138 community.

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

141 (b) The judge may consider any reports that may assist the  
142 court, including prior pre-disposition reports, psycho-social  
143 assessments, individualized educational programs (IEPs),  
144 developmental assessments, school records, abuse or neglect  
145 reports, home studies, protective investigations, and  
146 psychological and psychiatric evaluations. The child, the  
147 child's parents or legal guardians, defense counsel, and the  
148 state attorney may examine these reports and question the  
149 parties responsible for them at the hearing.

150 (c) The adult court shall retain jurisdiction unless the

151 court finds by a preponderance of evidence that the factors  
152 listed in paragraph (a) support returning the child to juvenile  
153 court.

154 (d) The adult court shall render an order including  
155 specific findings of fact and the reasons for its decision. The  
156 prosecution and defense may seek immediate review of the order  
157 through interlocutory appeal. The order shall be reviewable on  
158 appeal under s. 985.534 and the Florida Rules of Appellate  
159 Procedure.

160 (3)(2) EFFECT OF DIRECT FILE.—

161 (a) Once a child has been transferred for criminal  
162 prosecution pursuant to a hearing under subsection (2) an  
163 ~~information~~ and has been found to have committed the presenting  
164 offense or a lesser included offense, the child shall be handled  
165 thereafter in every respect as if an adult for any subsequent  
166 violation of state law, unless the court imposes juvenile  
167 sanctions under s. 985.565.

168 (b) When a child is transferred for criminal prosecution  
169 as an adult, the court shall immediately transfer and certify to  
170 the adult circuit court all felony cases pertaining to the  
171 child, for prosecution of the child as an adult, which have not  
172 yet resulted in a plea of guilty or nolo contendere or in which  
173 a finding of guilt has not been made. If a child is acquitted of  
174 all charged offenses or lesser included offenses contained in  
175 the original case transferred to adult court, all felony cases

176 that were transferred to adult court as a result of this  
 177 paragraph shall be subject to the same penalties to which such  
 178 cases would have been subject before being transferred to adult  
 179 court.

180 (c) When a child has been transferred for criminal  
 181 prosecution as an adult and has been found to have committed a  
 182 violation of state law, the disposition of the case may be made  
 183 under s. 985.565 and may include the enforcement of any  
 184 restitution ordered in any juvenile proceeding.

185 (4)~~(3)~~ An information filed pursuant to this section may  
 186 include all charges that are based on the same act, criminal  
 187 episode, or transaction as the primary offenses.

188 Section 2. Subsection (5) of section 985.265, Florida  
 189 Statutes, is renumbered as subsection (6), and a new subsection  
 190 (5) is added to that section, to read:

191 985.265 Detention transfer and release; education; adult  
 192 jails.—

193 (5) Notwithstanding any other provision of law, a child  
 194 subject to direct file shall not be held in a jail or other  
 195 facility intended or used for the detention of adults prior to a  
 196 court finding as a result of a hearing provided for in s.  
 197 985.557(2) that the child should be prosecuted as an adult.

198 Section 3. This act shall take effect July 1, 2020.