

1 A bill to be entitled

2 An act relating to prosecuting children as adults;
3 amending s. 985.556, F.S.; deleting provisions under
4 which a state attorney must either request a court to
5 transfer and certify children of certain ages who
6 commit specified crimes for prosecution as adults or
7 must provide written reasons to the court for not
8 making such a request, or proceed under certain
9 provisions; amending s. 985.557, F.S.; revising the
10 circumstances under which a state attorney may file an
11 information in cases that involve children of certain
12 ages who commit certain crimes; providing duties of
13 the Department of Corrections concerning children of
14 certain ages who are convicted of certain crimes;
15 amending s. 985.56, F.S.; providing that children 14
16 years of age or older, rather than children of any
17 age, who are charged with certain offenses are subject
18 to the jurisdiction of the court until an indictment
19 is returned by the grand jury; prohibiting the
20 transfer to adult court for criminal prosecution of
21 children who commit an indictable offense and who have
22 a pending competency hearing or have previously been
23 found incompetent and have not been restored to
24 competency by a court until the child's competency is
25 restored; providing for the tolling of certain time

26 | limits; authorizing, rather than requiring, that a
27 | child who is found to have committed specified crimes
28 | be sentenced according to certain provisions; amending
29 | s. 985.03, F.S.; conforming a cross-reference;
30 | amending s. 985.565, F.S.; conforming provisions to
31 | changes made by the act; providing an effective date.
32 |

33 | Be It Enacted by the Legislature of the State of Florida:
34 |

35 | Section 1. Subsections (4) and (5) of section 985.556,
36 | Florida Statutes, are renumbered as subsections (3) and (4),
37 | respectively, subsection (2) and present subsection (3) are
38 | amended, and subsection (1) of that section is republished, to
39 | read:

40 | 985.556 Waiver of juvenile court jurisdiction; hearing.—

41 | (1) VOLUNTARY WAIVER.—The court shall transfer and certify
42 | a child's criminal case for trial as an adult if the child is
43 | alleged to have committed a violation of law and, prior to the
44 | commencement of an adjudicatory hearing, the child, joined by a
45 | parent or, in the absence of a parent, by the guardian or
46 | guardian ad litem, demands in writing to be tried as an adult.
47 | Once a child has been transferred for criminal prosecution
48 | pursuant to a voluntary waiver hearing and has been found to
49 | have committed the presenting offense or a lesser included
50 | offense, the child shall be handled thereafter in every respect

51 as an adult for any subsequent violation of state law, unless
 52 the court imposes juvenile sanctions under s. 985.565(4) (b).

53 (2) INVOLUNTARY DISCRETIONARY WAIVER. ~~Except as provided~~
 54 ~~in subsection (3),~~ The state attorney may file a motion
 55 requesting the court to transfer the child for criminal
 56 prosecution if the child was 14 years of age or older at the
 57 time the alleged delinquent act or violation of law was
 58 committed.

59 ~~(3) INVOLUNTARY MANDATORY WAIVER.—~~

60 ~~(a) If the child was 14 years of age or older, and if the~~
 61 ~~child has been previously adjudicated delinquent for an act~~
 62 ~~classified as a felony, which adjudication was for the~~
 63 ~~commission of, attempt to commit, or conspiracy to commit~~
 64 ~~murder, sexual battery, armed or strong-armed robbery,~~
 65 ~~earjacking, home invasion robbery, aggravated battery,~~
 66 ~~aggravated assault, or burglary with an assault or battery, and~~
 67 ~~the child is currently charged with a second or subsequent~~
 68 ~~violent crime against a person; or~~

69 ~~(b) If the child was 14 years of age or older at the time~~
 70 ~~of commission of a fourth or subsequent alleged felony offense~~
 71 ~~and the child was previously adjudicated delinquent or had~~
 72 ~~adjudication withheld for or was found to have committed, or to~~
 73 ~~have attempted or conspired to commit, three offenses that are~~
 74 ~~felony offenses if committed by an adult, and one or more of~~
 75 ~~such felony offenses involved the use or possession of a firearm~~

76 ~~or violence against a person;~~
 77
 78 ~~the state attorney shall request the court to transfer and~~
 79 ~~certify the child for prosecution as an adult or shall provide~~
 80 ~~written reasons to the court for not making such request, or~~
 81 ~~proceed under s. 985.557(1). Upon the state attorney's request,~~
 82 ~~the court shall either enter an order transferring the case and~~
 83 ~~certifying the case for trial as if the child were an adult or~~
 84 ~~provide written reasons for not issuing such an order.~~

85 Section 2. Section 985.557, Florida Statutes, is amended
 86 to read:

87 985.557 Prosecuting children as adults ~~Direct filing of an~~
 88 ~~information; discretionary criteria.-~~

89 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~
 90 ~~FILE.-~~

91 ~~(a) With respect to any child who was 14 or 15 years of~~
 92 ~~age at the time the alleged offense was committed, the state~~
 93 ~~attorney may file an information when in the state attorney's~~
 94 ~~judgment and discretion the public interest requires that adult~~
 95 ~~sanctions be considered or imposed and when the offense charged~~
 96 ~~is for the commission of, attempt to commit, or conspiracy to~~
 97 ~~commit:~~

- 98 1. ~~Arson;~~
- 99 2. ~~Sexual battery;~~
- 100 3. ~~Robbery;~~

- 101 4. ~~Kidnapping;~~
- 102 5. ~~Aggravated child abuse;~~
- 103 6. ~~Aggravated assault;~~
- 104 7. ~~Aggravated stalking;~~
- 105 8. ~~Murder;~~
- 106 9. ~~Manslaughter;~~
- 107 10. ~~Unlawful throwing, placing, or discharging of a~~
- 108 ~~destructive device or bomb;~~
- 109 11. ~~Armed burglary in violation of s. 810.02(2)(b) or~~
- 110 ~~specified burglary of a dwelling or structure in violation of s.~~
- 111 ~~810.02(2)(c), or burglary with an assault or battery in~~
- 112 ~~violation of s. 810.02(2)(a);~~
- 113 12. ~~Aggravated battery;~~
- 114 13. ~~Any lewd or lascivious offense committed upon or in~~
- 115 ~~the presence of a person less than 16 years of age;~~
- 116 14. ~~Carrying, displaying, using, threatening, or~~
- 117 ~~attempting to use a weapon or firearm during the commission of a~~
- 118 ~~felony;~~
- 119 15. ~~Grand theft in violation of s. 812.014(2)(a);~~
- 120 16. ~~Possessing or discharging any weapon or firearm on~~
- 121 ~~school property in violation of s. 790.115;~~
- 122 17. ~~Home invasion robbery;~~
- 123 18. ~~Carjacking; or~~
- 124 19. ~~Grand theft of a motor vehicle in violation of s.~~
- 125 ~~812.014(2)(c)6. or grand theft of a motor vehicle valued at~~

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126 | ~~\$20,000 or more in violation of s. 812.014(2)(b) if the child~~
127 | ~~has a previous adjudication for grand theft of a motor vehicle~~
128 | ~~in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).~~

129 | ~~(a)(b)~~ With respect to any child who was 16 or 17 years of
130 | age at the time the alleged violent felony offense was
131 | committed, the state attorney may file an information when in
132 | the state attorney's judgment and discretion the public interest
133 | requires that adult sanctions be considered or imposed. However,
134 | the state attorney may not file an information on a child
135 | charged with a misdemeanor, unless the child has had at least
136 | two previous adjudications or adjudications withheld for
137 | delinquent acts, one of which involved an offense classified as
138 | a violent felony under state law.

139 | (b) The Department of Corrections shall make every
140 | reasonable effort to ensure that any child 16 or 17 years of age
141 | who is convicted and sentenced under this subsection is
142 | completely separated such that there is no physical contact with
143 | adult offenders in the facility, to the extent that such
144 | separation is consistent with chapter 958.

145 | (2) EFFECT OF DIRECT FILE.—

146 | (a) Once a child has been transferred for criminal
147 | prosecution pursuant to an information and has been found to
148 | have committed the presenting offense or a lesser included
149 | offense, the child shall be handled thereafter in every respect
150 | as if an adult for any subsequent violation of state law, unless

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151 the court imposes juvenile sanctions under s. 985.565.

152 (b) When a child is transferred for criminal prosecution
153 as an adult, the court shall immediately transfer and certify to
154 the adult circuit court all felony cases pertaining to the
155 child, for prosecution of the child as an adult, which have not
156 yet resulted in a plea of guilty or nolo contendere or in which
157 a finding of guilt has not been made. If a child is acquitted of
158 all charged offenses or lesser included offenses contained in
159 the original case transferred to adult court, all felony cases
160 that were transferred to adult court as a result of this
161 paragraph shall be subject to the same penalties to which such
162 cases would have been subject before being transferred to adult
163 court.

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

169 (3) CHARGES INCLUDED ON INFORMATION.—An information filed
170 pursuant to this section may include all charges that are based
171 on the same act, criminal episode, or transaction as the primary
172 offenses.

173 Section 3. Section 985.56, Florida Statutes, is amended to
174 read:

175 985.56 Indictment of a juvenile.—

176 (1) A child 14 years of age or older ~~of any age~~ who is
177 charged with a violation of state law punishable by death or by
178 life imprisonment is subject to the jurisdiction of the court as
179 set forth in s. 985.0301(2) unless and until an indictment on
180 the charge is returned by the grand jury. When such indictment
181 is returned, the petition for delinquency, if any, must be
182 dismissed and the child must be tried and handled in every
183 respect as an adult:

184 (a) On the indictable offense punishable by death or by
185 life imprisonment; and

186 (b) On all other felonies or misdemeanors charged in the
187 indictment which are based on the same act or transaction as the
188 indictable offense punishable by death or by life imprisonment
189 or on one or more acts or transactions connected with the
190 offense punishable by death or by life imprisonment.

191 (2) An adjudicatory hearing may not be held until 21 days
192 after the child is taken into custody and charged with having
193 committed an indictable offense punishable by death or by life
194 imprisonment, unless the state attorney advises the court in
195 writing that he or she does not intend to present the case to
196 the grand jury, or has presented the case to the grand jury and
197 the grand jury has not returned an indictment. If the court
198 receives such a notice from the state attorney, or if the grand
199 jury fails to act within the 21-day period, the court may
200 proceed as otherwise authorized under this part.

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201 (3) Notwithstanding any other law, a child who commits an
202 offense for which he or she may be indicted and who has a
203 pending competency hearing in juvenile court or has been
204 previously found to be incompetent and has not been restored to
205 competency by a court may not be transferred to adult court for
206 criminal prosecution until the child's competency is restored. A
207 pending competency hearing or a finding of incompetency tolls
208 the time limits in subsection (2). If the child is found to have
209 committed the offense punishable by death or by life
210 imprisonment, the child may ~~shall~~ be sentenced pursuant to s.
211 985.565 ~~as an adult~~. If the child ~~juvenile~~ is not found to have
212 committed the indictable offense but is found to have committed
213 a lesser included offense or any other offense for which he or
214 she was indicted as a part of the criminal episode, the child
215 may be sentenced pursuant to ~~court may sentence under~~ s.
216 985.565.

217 (4) (a) If ~~Once~~ a child has been indicted pursuant to this
218 section and has been found to have committed any offense for
219 which he or she was indicted as a part of the criminal episode,
220 the child shall be handled thereafter in every respect as if an
221 adult for any subsequent violation of state law, unless the
222 court imposes juvenile sanctions under s. 985.565.

223 (b) If ~~When~~ a child has been indicted pursuant to this
224 section, the court shall immediately transfer and certify to the
225 adult circuit court all felony cases pertaining to the child,

226 | for prosecution of the child as an adult, which have not yet
 227 | resulted in a plea of guilty or nolo contendere or in which a
 228 | finding of guilt has not been made. If the child is acquitted of
 229 | all charged offenses or lesser included offenses contained in
 230 | the indictment case, all felony cases that were transferred to
 231 | adult court pursuant to this paragraph shall be subject to the
 232 | same penalties such cases were subject to before being
 233 | transferred to adult court.

234 | Section 4. Subsection (54) of section 985.03, Florida
 235 | Statutes, is amended to read:

236 | 985.03 Definitions.—As used in this chapter, the term:

237 | (54) "Waiver hearing" means a hearing provided for under
 238 | s. 985.556(3) ~~s. 985.556(4)~~.

239 | Section 5. Paragraphs (a) and (b) of subsection (4) of
 240 | section 985.565, Florida Statutes, are amended to read:

241 | 985.565 Sentencing powers; procedures; alternatives for
 242 | juveniles prosecuted as adults.—

243 | (4) SENTENCING ALTERNATIVES.—

244 | (a) *Adult sanctions*.—

245 | 1. Cases prosecuted on indictment.—If the child is found
 246 | to have committed the offense punishable by death or life
 247 | imprisonment, the child shall be sentenced as an adult. If the
 248 | juvenile is not found to have committed the indictable offense
 249 | but is found to have committed a lesser included offense or any
 250 | other offense for which he or she was indicted as a part of the

251 criminal episode, the court may sentence as follows:

252 a. As an adult;

253 b. Under chapter 958; or

254 c. As a juvenile under this section.

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

261 a. As an adult;

262 b. Under chapter 958; or

263 c. As a juvenile under this section.

264 3. ~~Notwithstanding any other provision to the contrary, if~~
265 ~~the state attorney is required to file a motion to transfer and~~
266 ~~certify the juvenile for prosecution as an adult under s.~~
267 ~~985.556(3) and that motion is granted, the court must impose~~
268 ~~adult sanctions.~~

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

273 4.5. When a child has been transferred for criminal
274 prosecution as an adult and has been found to have committed a
275 violation of state law, the disposition of the case may include

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276 the enforcement of any restitution ordered in any juvenile
277 proceeding.

278 (b) *Juvenile sanctions.*—For juveniles transferred to adult
279 court ~~but who do not qualify for such transfer under s.~~
280 ~~985.556(3)~~, the court may impose juvenile sanctions under this
281 paragraph. If juvenile sentences are imposed, the court shall,
282 under this paragraph, adjudge the child to have committed a
283 delinquent act. Adjudication of delinquency may not be deemed a
284 conviction, nor shall it operate to impose any of the civil
285 disabilities ordinarily resulting from a conviction. The court
286 shall impose an adult sanction or a juvenile sanction and may
287 not sentence the child to a combination of adult and juvenile
288 punishments. An adult sanction or a juvenile sanction may
289 include enforcement of an order of restitution or probation
290 previously ordered in any juvenile proceeding. However, if the
291 court imposes a juvenile sanction and the department determines
292 that the sanction is unsuitable for the child, the department
293 shall return custody of the child to the sentencing court for
294 further proceedings, including the imposition of adult
295 sanctions. Upon adjudicating a child delinquent under subsection
296 (1), the court may:

297 1. Place the child in a probation program under the
298 supervision of the department for an indeterminate period of
299 time until the child reaches the age of 19 years or sooner if
300 discharged by order of the court.

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301 2. Commit the child to the department for treatment in an
302 appropriate program for children for an indeterminate period of
303 time until the child is 21 or sooner if discharged by the
304 department. The department shall notify the court of its intent
305 to discharge no later than 14 days before discharge. Failure of
306 the court to timely respond to the department's notice shall be
307 considered approval for discharge.

308 3. Order disposition under ss. 985.435, 985.437, 985.439,
309 985.441, 985.45, and 985.455 as an alternative to youthful
310 offender or adult sentencing if the court determines not to
311 impose youthful offender or adult sanctions.

312

313 It is the intent of the Legislature that the criteria and
314 guidelines in this subsection are mandatory and that a
315 determination of disposition under this subsection is subject to
316 the right of the child to appellate review under s. 985.534.

317 Section 6. This act shall take effect July 1, 2020.