

1 A bill to be entitled
2 An act relating to direct filing of an information;
3 amending s. 985.265, F.S.; prohibiting a child who has
4 been transferred to adult court for criminal
5 prosecution pursuant to direct file from being held in
6 a jail or other facility used for the detention of
7 adults before a specified hearing to determine if the
8 child should be prosecuted as an adult; amending s.
9 985.557, F.S.; deleting references to the state
10 attorney's discretion to direct file a juvenile;
11 revising discretionary direct file criteria; requiring
12 a court to advise a child and his or her parent or
13 guardian of the child's right to a certain due process
14 evidentiary hearing upon a state attorney filing an
15 information transferring a child to adult court;
16 authorizing the child or the child's parent or
17 guardian to request an evidentiary hearing; requiring
18 the judge to conduct the hearing within a certain
19 timeframe; requiring a judge to consider specified
20 information and factors; authorizing a judge to
21 consider certain reports; providing for continued
22 jurisdiction with regard to the child; providing an
23 exception; requiring the adult court to render an
24 order that includes certain findings; authorizing
25 review of the order; reenacting s. 985.556(3), F.S.,

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26 relating to involuntary mandatory waivers, to
 27 incorporate the amendment made to s. 985.557, F.S., in
 28 a reference thereto; providing an effective date.

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

32 Section 1. Subsection (5) of section 985.265, Florida
 33 Statutes, is amended to read

34 985.265 Detention transfer and release; education; adult
 35 jails.—

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

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

41 1. The court may not order or allow a child alleged to
 42 have committed a misdemeanor who is being transferred for
 43 criminal prosecution pursuant to either s. 985.556 or s. 985.557
 44 to be detained or held in a jail or other facility intended or
 45 used for the detention of adults; however, such child may be
 46 held temporarily in a detention facility; and ~~or~~

47 2. A child who has been transferred for criminal
 48 prosecution as an adult pursuant to s. 985.557 may not be held
 49 in a jail or other facility intended or used for the detention
 50 of adults before a court finding, as a result of a hearing

51 provided for under s. 985.557(3), that the child should be
52 prosecuted as an adult; or

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

55
56 The child shall be housed separately from adult inmates to
57 prohibit a child from having regular contact with incarcerated
58 adults, including trusties. "Regular contact" means sight and
59 sound contact. Separation of children from adults shall permit
60 no more than haphazard or accidental contact. The receiving jail
61 or other facility shall contain a separate section for children
62 and shall have an adequate staff to supervise and monitor the
63 child's activities at all times. Supervision and monitoring of
64 children includes physical observation and documented checks by
65 jail or receiving facility supervisory personnel at intervals
66 not to exceed 10 minutes. This subsection does not prohibit
67 placing two or more children in the same cell. Under no
68 circumstances shall a child be placed in the same cell with an
69 adult.

70 Section 2. Section 985.557, Florida Statutes, is amended
71 to read:

72 985.557 Direct filing of an information; discretionary
73 criteria.—

74 (1) DISCRETIONARY DIRECT FILE.—

75 (a) With respect to any child who was 14 or 15 years of

76 | age at the time the alleged offense was committed, the state
 77 | attorney may file an information when ~~in the state attorney's~~
 78 | ~~judgment and discretion~~ the public interest requires that adult
 79 | sanctions be considered or imposed and when the offense charged
 80 | is for the commission of, or attempt to commit, any of the
 81 | following, or conspiracy to commit:

- 82 | 1. Arson.†
- 83 | 2. Sexual battery.†
- 84 | 3. Robbery.†
- 85 | 4. Kidnapping.†
- 86 | 5. Aggravated child abuse.†
- 87 | 6. Aggravated assault.†
- 88 | 7. Aggravated stalking.†
- 89 | 8. Murder.†
- 90 | 9. Manslaughter.†
- 91 | 10. Unlawful throwing, placing, or discharging of a
 92 | destructive device or bomb.†
- 93 | 11. Armed burglary in violation of s. 810.02(2)(b), or
 94 | specified burglary of a dwelling or structure in violation of s.
 95 | 810.02(2)(c), or burglary with an assault or battery in
 96 | violation of s. 810.02(2)(a).†
- 97 | 12. Aggravated battery.†
- 98 | 13. Any lewd or lascivious offense committed upon or in
 99 | the presence of a person less than 16 years of age.†
- 100 | 14. Carrying, displaying, using, threatening, or

101 attempting to use a weapon or firearm during the commission of a
 102 felony.~~†~~

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

104 16. Possessing or discharging any weapon or firearm on
 105 school property in violation of s. 790.115.~~†~~

106 17. Home invasion robbery.~~†~~

107 18. Carjacking.~~†~~~~or~~

108 19. Grand theft of a motor vehicle in violation of s.
 109 812.014(2) (c)6. or grand theft of a motor vehicle valued at
 110 \$20,000 or more in violation of s. 812.014(2) (b) if the child
 111 has a previous adjudication for grand theft of a motor vehicle
 112 in violation of s. 812.014(2) (c)6. or s. 812.014(2) (b).

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

123 (2) NOTIFICATION TO PARENT OR GUARDIAN.—Upon a state
 124 attorney filing an information transferring a child to adult
 125 court, the court must advise the child and his or her parent or

126 guardian that the child has the right to a due process
127 evidentiary hearing before a judge, and the child or the parent
128 or guardian may request such evidentiary hearing.

129 (3) DUE PROCESS EVIDENTIARY HEARING BEFORE A JUDGE.—
130 Notwithstanding any other law, and in all cases, a child charged
131 with a crime or his or her parent or guardian may request a due
132 process evidentiary hearing after the state attorney's filing of
133 an information in adult court under this section.

134 (a) The judge shall conduct the hearing within 30 days
135 after the request, excluding Saturdays, Sundays, and legal
136 holidays, unless the child or the child's attorney shows good
137 cause for a delay. The purpose of the hearing is for the court
138 to determine whether it is necessary for the community's
139 protection that the child be prosecuted in adult court. The
140 judge shall consider all of the following:

141 1. Evaluations and assessments completed by the
142 department.

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

145 a. The effect, if any, of immaturity, impetuosity, or
146 failure to appreciate risks and consequences of the child's
147 participation in the alleged offense.

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

150 c. The effect, if any, of characteristics attributable to

151 the child's youth on the child's judgment.

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

154 a. Previous contacts with the department, the Department
155 of Corrections, the Department of Children and Families, other
156 law enforcement agencies, and the courts.

157 b. Prior periods of probation.

158 c. Prior adjudications that the child committed a
159 delinquent act or violation of law, with greater weight being
160 given if a court previously found that the child committed a
161 delinquent act or violation of law involving violence to
162 persons.

163 d. Prior commitments to institutions of the department,
164 the Department of Corrections, or agencies under contract with
165 either department.

166 e. Any history of trauma, abuse or neglect, foster care
167 placements, failed adoption, fetal alcohol syndrome, exposure to
168 controlled substances at birth, or below-average intellectual
169 functioning.

170 f. Identification of the child as a student requiring
171 exceptional student education or having previously received
172 psychological services.

173 4. The nature of the alleged offense and the child's
174 participation in it, including:

175 a. Whether the alleged offense is punishable by death or

176 life imprisonment.

177 b. Whether the alleged offense was against persons or
178 property.

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

181 d. The extent of the child's participation in the alleged
182 offense.

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

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

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

190 b. By the use of procedures, services, and facilities
191 currently available to the adult court, including whether the
192 lowest permissible sentence under the Criminal Punishment Code
193 is a nonstate prison sanction.

194 6. Whether the child could obtain habilitative or
195 rehabilitative services available in the juvenile justice
196 system.

197 7. Whether the child could receive a sentence in juvenile
198 court which would provide adequate safety and protection for the
199 community.

200 8. Whether the child's best interests would be served by

201 prosecuting the child in juvenile court.

202 (b) The judge may consider any reports that may assist the
 203 court, including prior predisposition reports, psychosocial
 204 assessments, individual educational plans, developmental
 205 assessments, school records, abuse or neglect reports, home
 206 studies, protective investigations, and psychological and
 207 psychiatric evaluations. The child, the child's parents or legal
 208 guardians, his or her defense counsel, and the state attorney
 209 may examine these reports and, at the hearing, question the
 210 parties responsible for creating them.

211 (c) The adult court shall retain jurisdiction unless the
 212 court finds by a preponderance of the evidence that the factors
 213 listed in paragraph (a) support returning the child to juvenile
 214 court.

215 (d) The adult court shall render an order including
 216 specific findings of fact and the reasons for its decision. The
 217 prosecution or defense may seek immediate review of the order
 218 through interlocutory appeal. The order shall be reviewable on
 219 appeal under the Florida Rules of Appellate Procedure.

220 (4)(2) EFFECT OF DIRECT FILE.—

221 (a) Once a child has been transferred for criminal
 222 prosecution pursuant to an information and has been found to
 223 have committed the presenting offense or a lesser included
 224 offense, the child shall be handled thereafter in every respect
 225 as if an adult for any subsequent violation of state law, unless

226 | the court imposes juvenile sanctions under s. 985.565.

227 | (b) When a child is transferred for criminal prosecution
 228 | as an adult, the court shall immediately transfer and certify to
 229 | the adult circuit court all felony cases pertaining to the
 230 | child, for prosecution of the child as an adult, which have not
 231 | yet resulted in a plea of guilty or nolo contendere or in which
 232 | a finding of guilt has not been made. If a child is acquitted of
 233 | all charged offenses or lesser included offenses contained in
 234 | the original case transferred to adult court, all felony cases
 235 | that were transferred to adult court as a result of this
 236 | paragraph shall be subject to the same penalties to which such
 237 | cases would have been subject before being transferred to adult
 238 | court.

239 | (c) When a child has been transferred for criminal
 240 | prosecution as an adult and has been found to have committed a
 241 | violation of state law, the disposition of the case may be made
 242 | under s. 985.565 and may include the enforcement of any
 243 | restitution ordered in any juvenile proceeding.

244 | (5) ~~(3)~~ CHARGES INCLUDED ON INFORMATION.—An information
 245 | filed pursuant to this section may include all charges that are
 246 | based on the same act, criminal episode, or transaction as the
 247 | primary offenses.

248 | Section 3. For the purpose of incorporating the amendment
 249 | made by this act to section 985.557, Florida Statutes, in a
 250 | reference thereto, subsection (3) of section 985.556, Florida

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251 Statutes, is reenacted to read:

252 985.556 Waiver of juvenile court jurisdiction; hearing.—

253 (3) INVOLUNTARY MANDATORY WAIVER.—

254 (a) If the child was 14 years of age or older, and if the
255 child has been previously adjudicated delinquent for an act
256 classified as a felony, which adjudication was for the
257 commission of, attempt to commit, or conspiracy to commit
258 murder, sexual battery, armed or strong-armed robbery,
259 carjacking, home-invasion robbery, aggravated battery,
260 aggravated assault, or burglary with an assault or battery, and
261 the child is currently charged with a second or subsequent
262 violent crime against a person; or

263 (b) If the child was 14 years of age or older at the time
264 of commission of a fourth or subsequent alleged felony offense
265 and the child was previously adjudicated delinquent or had
266 adjudication withheld for or was found to have committed, or to
267 have attempted or conspired to commit, three offenses that are
268 felony offenses if committed by an adult, and one or more of
269 such felony offenses involved the use or possession of a firearm
270 or violence against a person;

271
272 the state attorney shall request the court to transfer and
273 certify the child for prosecution as an adult or shall provide
274 written reasons to the court for not making such request, or
275 proceed under s. 985.557(1). Upon the state attorney's request,

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276 | the court shall either enter an order transferring the case and
277 | certifying the case for trial as if the child were an adult or
278 | provide written reasons for not issuing such an order.

279 | Section 4. This act shall take effect July 1, 2021.