

By Senator Bracy

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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 provide written reasons to the court for not making
8 such a request, or must 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; amending s. 985.56,
13 F.S.; providing that children 14 years of age or
14 older, rather than children of any age, who are
15 charged with certain offenses are subject to court
16 jurisdiction until an indictment is returned;
17 prohibiting the transfer of a child to adult court for
18 criminal prosecution of an indictable offense until
19 the child's competency has been restored, in certain
20 circumstances; providing for the tolling of certain
21 time limits; authorizing, rather than requiring, a
22 child who is found to have committed specified crimes
23 to be sentenced according to certain provisions;
24 amending s. 985.565, F.S.; authorizing, rather than
25 requiring, a child to be sentenced as an adult if the
26 child is found to have committed an offense punishable
27 by death or life imprisonment; conforming provisions
28 to changes made by the act; amending s. 985.03, F.S.;
29 conforming a cross-reference; providing an effective

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30 date.

31
32 Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Subsections (2) and (3) of section 985.556,
35 Florida Statutes, are amended, and subsection (1) of that
36 section is republished, to read:

37 985.556 Waiver of juvenile court jurisdiction; hearing.—

38 (1) VOLUNTARY WAIVER.—The court shall transfer and certify
39 a child's criminal case for trial as an adult if the child is
40 alleged to have committed a violation of law and, prior to the
41 commencement of an adjudicatory hearing, the child, joined by a
42 parent or, in the absence of a parent, by the guardian or
43 guardian ad litem, demands in writing to be tried as an adult.
44 Once a child has been transferred for criminal prosecution
45 pursuant to a voluntary waiver hearing and has been found to
46 have committed the presenting offense or a lesser included
47 offense, the child shall be handled thereafter in every respect
48 as an adult for any subsequent violation of state law, unless
49 the court imposes juvenile sanctions under s. 985.565(4)(b).

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

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

56 ~~(a) If the child was 14 years of age or older, and if the~~
57 ~~child has been previously adjudicated delinquent for an act~~
58 ~~classified as a felony, which adjudication was for the~~

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59 ~~commission of, attempt to commit, or conspiracy to commit~~
60 ~~murder, sexual battery, armed or strong-armed robbery,~~
61 ~~earjacking, home-invasion robbery, aggravated battery,~~
62 ~~aggravated assault, or burglary with an assault or battery, and~~
63 ~~the child is currently charged with a second or subsequent~~
64 ~~violent crime against a person; or~~

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

73
74 ~~the state attorney shall request the court to transfer and~~
75 ~~certify the child for prosecution as an adult or shall provide~~
76 ~~written reasons to the court for not making such request, or~~
77 ~~proceed under s. 985.557(1). Upon the state attorney's request,~~
78 ~~the court shall either enter an order transferring the case and~~
79 ~~certifying the case for trial as if the child were an adult or~~
80 ~~provide written reasons for not issuing such an order.~~

81 Section 2. Section 985.557, Florida Statutes, is amended to
82 read:

83 985.557 Prosecuting children as adults ~~Direct filing of an~~
84 ~~information; discretionary criteria.-~~

85 (1) DISCRETIONARY PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~
86 ~~FILE.-~~

87 ~~(a) With respect to any child who was 14 or 15 years of age~~

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88 ~~at the time the alleged offense was committed, the state~~
89 ~~attorney may file an information when in the state attorney's~~
90 ~~judgment and discretion the public interest requires that adult~~
91 ~~sanctions be considered or imposed and when the offense charged~~
92 ~~is for the commission of, attempt to commit, or conspiracy to~~
93 ~~commit:~~

94 ~~1. Arson;~~

95 ~~2. Sexual battery;~~

96 ~~3. Robbery;~~

97 ~~4. Kidnapping;~~

98 ~~5. Aggravated child abuse;~~

99 ~~6. Aggravated assault;~~

100 ~~7. Aggravated stalking;~~

101 ~~8. Murder;~~

102 ~~9. Manslaughter;~~

103 ~~10. Unlawful throwing, placing, or discharging of a~~
104 ~~destructive device or bomb;~~

105 ~~11. Armed burglary in violation of s. 810.02(2)(b) or~~
106 ~~specified burglary of a dwelling or structure in violation of s.~~
107 ~~810.02(2)(c), or burglary with an assault or battery in~~
108 ~~violation of s. 810.02(2)(a);~~

109 ~~12. Aggravated battery;~~

110 ~~13. Any lewd or lascivious offense committed upon or in the~~
111 ~~presence of a person less than 16 years of age;~~

112 ~~14. Carrying, displaying, using, threatening, or attempting~~
113 ~~to use a weapon or firearm during the commission of a felony;~~

114 ~~15. Grand theft in violation of s. 812.014(2)(a);~~

115 ~~16. Possessing or discharging any weapon or firearm on~~
116 ~~school property in violation of s. 790.115;~~

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117 ~~17. Home invasion robbery;~~

118 ~~18. Carjacking; or~~

119 ~~19. Grand theft of a motor vehicle in violation of s.~~
120 ~~812.014(2)(c)6. or grand theft of a motor vehicle valued at~~
121 ~~\$20,000 or more in violation of s. 812.014(2)(b) if the child~~
122 ~~has a previous adjudication for grand theft of a motor vehicle~~
123 ~~in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).~~

124 ~~(b)~~ With respect to any child who was 16 or 17 years of age
125 at the time the alleged forcible felony, as defined in s.
126 776.08, offense was committed, the state attorney may file an
127 information when in the state attorney's judgment and discretion
128 the public interest requires that adult sanctions be considered
129 or imposed. However, the state attorney may not file an
130 information on a child charged with a misdemeanor, unless the
131 child has had at least two previous adjudications or
132 adjudications withheld for delinquent acts, one of which
133 involved an offense classified as a forcible felony under state
134 law.

135 (2) EFFECT OF PROSECUTION OF CHILDREN AS ADULTS ~~DIRECT~~
136 ~~FILE.~~—

137 (a) Once a child has been transferred for criminal
138 prosecution pursuant to an information and has been found to
139 have committed the presenting offense or a lesser included
140 offense, the child shall be handled thereafter in every respect
141 as if an adult for any subsequent violation of state law, unless
142 the court imposes juvenile sanctions under s. 985.565.

143 (b) When a child is transferred for criminal prosecution as
144 an adult, the court shall immediately transfer and certify to
145 the adult circuit court all felony cases pertaining to the

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146 child, for prosecution of the child as an adult, which have not
147 yet resulted in a plea of guilty or nolo contendere or in which
148 a finding of guilt has not been made. If a child is acquitted of
149 all charged offenses or lesser included offenses contained in
150 the original case transferred to adult court, all felony cases
151 that were transferred to adult court as a result of this
152 paragraph shall be subject to the same penalties to which such
153 cases would have been subject before being transferred to adult
154 court.

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

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

164 Section 3. Section 985.56, Florida Statutes, is amended to
165 read:

166 985.56 Indictment of a juvenile.—

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

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175 (a) On the indictable offense punishable by death or by
176 life imprisonment; and

177 (b) On all other felonies or misdemeanors charged in the
178 indictment which are based on the same act or transaction as the
179 indictable offense punishable by death or by life imprisonment
180 or on one or more acts or transactions connected with the
181 offense punishable by death or by life imprisonment.

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

192 (3) Notwithstanding any other law, a child who commits an
193 offense for which he or she may be indicted and who has a
194 pending competency hearing in juvenile court or who previously
195 has been found to be incompetent and has not been restored to
196 competency by a court may not be transferred to adult court for
197 criminal prosecution until the child's competency is restored. A
198 pending competency hearing or a finding of incompetency tolls
199 the time limits in subsection (2). If the child is found to have
200 committed the offense punishable by death or by life
201 imprisonment, the child may ~~shall~~ be sentenced pursuant to s.
202 985.565 ~~as an adult~~. If the juvenile is not found to have
203 committed the indictable offense but is found to have committed

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204 a lesser included offense or any other offense for which he or
205 she was indicted as a part of the criminal episode, the court
206 may sentence under s. 985.565.

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

213 (b) If ~~When~~ a child has been indicted pursuant to this
214 section, the court must ~~shall~~ immediately transfer and certify
215 to the adult circuit court all felony cases pertaining to the
216 child, for prosecution of the child as an adult, which have not
217 yet resulted in a plea of guilty or nolo contendere or in which
218 a finding of guilt has not been made. If the child is acquitted
219 of all charged offenses or lesser included offenses contained in
220 the indictment case, all felony cases that were transferred to
221 adult court pursuant to this paragraph must ~~shall~~ be subject to
222 the same penalties such cases were subject to before being
223 transferred to adult court.

224 Section 4. Paragraphs (a) and (b) of subsection (4) of
225 section 985.565, Florida Statutes, are amended to read:

226 985.565 Sentencing powers; procedures; alternatives for
227 juveniles prosecuted as adults.—

228 (4) SENTENCING ALTERNATIVES.—

229 (a) *Adult sanctions*.—

230 1. Cases prosecuted on indictment.—If the child is found to
231 have committed the offense punishable by death or life
232 imprisonment, the child may ~~shall~~ be sentenced as an adult. If

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233 the juvenile is not found to have committed the indictable
234 offense but is found to have committed a lesser included offense
235 or any other offense for which he or she was indicted as a part
236 of the criminal episode, the court may sentence as follows:

- 237 a. As an adult;
238 b. Under chapter 958; or
239 c. As a juvenile under this section.

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

- 246 a. As an adult;
247 b. Under chapter 958; or
248 c. As a juvenile under this section.

249 ~~3. Notwithstanding any other provision to the contrary, if~~
250 ~~the state attorney is required to file a motion to transfer and~~
251 ~~certify the juvenile for prosecution as an adult under s.~~
252 ~~985.556(3) and that motion is granted, the court must impose~~
253 ~~adult sanctions.~~

254 3.4. Any sentence imposing adult sanctions is presumed
255 appropriate, and the court is not required to set forth specific
256 findings or enumerate the criteria in this subsection as any
257 basis for its decision to impose adult sanctions.

258 ~~4.5.~~ When a child has been transferred for criminal
259 prosecution as an adult and has been found to have committed a
260 violation of state law, the disposition of the case may include
261 the enforcement of any restitution ordered in any juvenile

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262 proceeding.

263 (b) *Juvenile sanctions.*—For juveniles transferred to adult
264 court ~~but who do not qualify for such transfer under s.~~
265 ~~985.556(3)~~, the court may impose juvenile sanctions under this
266 paragraph. If juvenile sentences are imposed, the court shall,
267 under this paragraph, adjudge the child to have committed a
268 delinquent act. Adjudication of delinquency may not be deemed a
269 conviction, nor shall it operate to impose any of the civil
270 disabilities ordinarily resulting from a conviction. The court
271 shall impose an adult sanction or a juvenile sanction and may
272 not sentence the child to a combination of adult and juvenile
273 punishments. An adult sanction or a juvenile sanction may
274 include enforcement of an order of restitution or probation
275 previously ordered in any juvenile proceeding. However, if the
276 court imposes a juvenile sanction and the department determines
277 that the sanction is unsuitable for the child, the department
278 shall return custody of the child to the sentencing court for
279 further proceedings, including the imposition of adult
280 sanctions. Upon adjudicating a child delinquent under subsection
281 (1), the court may:

282 1. Place the child in a probation program under the
283 supervision of the department for an indeterminate period of
284 time until the child reaches the age of 19 years or sooner if
285 discharged by order of the court.

286 2. Commit the child to the department for treatment in an
287 appropriate program for children for an indeterminate period of
288 time until the child is 21 or sooner if discharged by the
289 department. The department shall notify the court of its intent
290 to discharge no later than 14 days before discharge. Failure of

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291 the court to timely respond to the department's notice shall be
292 considered approval for discharge.

293 3. Order disposition under ss. 985.435, 985.437, 985.439,
294 985.441, 985.45, and 985.455 as an alternative to youthful
295 offender or adult sentencing if the court determines not to
296 impose youthful offender or adult sanctions.

297

298 It is the intent of the Legislature that the criteria and
299 guidelines in this subsection are mandatory and that a
300 determination of disposition under this subsection is subject to
301 the right of the child to appellate review under s. 985.534.

302 Section 5. Subsection (54) of section 985.03, Florida
303 Statutes, is amended to read:

304 985.03 Definitions.—As used in this chapter, the term:

305 (54) "Waiver hearing" means a hearing provided for under s.
306 985.556(3) ~~s. 985.556(4)~~.

307 Section 6. This act shall take effect July 1, 2022.