

By Senator Thompson

12-00117-15

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1                   A bill to be entitled  
2           An act relating to juvenile justice; repealing s.  
3           985.557, F.S., relating to direct filing of an  
4           information; amending ss. 985.04, 985.15, 985.265, and  
5           985.556, F.S.; conforming provisions to changes made  
6           by the act; amending s. 985.565, F.S.; conforming  
7           provisions to changes made by the act; authorizing,  
8           rather than requiring, a court to impose adult  
9           sanctions under certain circumstances; providing an  
10          effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14           Section 1. Section 985.557, Florida Statutes, is repealed.

15           Section 2. Subsection (2) of section 985.04, Florida  
16 Statutes, is amended to read:

17           985.04 Oaths; records; confidential information.—

18           (2) Notwithstanding any other provisions of this chapter,  
19 the name, photograph, address, and crime or arrest report of a  
20 child:

21           (a) Taken into custody if the child has been taken into  
22 custody by a law enforcement officer for a violation of law  
23 which, if committed by an adult, would be a felony;

24           (b) Found by a court to have committed three or more  
25 violations of law which, if committed by an adult, would be  
26 misdemeanors;

27           (c) ~~Transferred to the adult system under s. 985.557,~~  
28 Indicted under s. 985.56~~7~~, or waived under s. 985.556; or

29           ~~(d) Taken into custody by a law enforcement officer for a~~

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30 ~~violation of law subject to s. 985.557(2) (b) or (d); or~~

31 (d)~~(e)~~ Transferred to the adult system but sentenced to the  
32 juvenile system under s. 985.565

33  
34 shall not be considered confidential and exempt from s.  
35 119.07(1) solely because of the child's age.

36 Section 3. Subsection (1) of section 985.15, Florida  
37 Statutes, is amended to read:

38 985.15 Filing decisions.—

39 (1) The state attorney may in all cases take action  
40 independent of the action or lack of action of the juvenile  
41 probation officer and shall determine the action that is in the  
42 best interest of the public and the child. If the child meets  
43 the criteria requiring prosecution as an adult under s. 985.556,  
44 the state attorney shall request the court to transfer and  
45 certify the child for prosecution as an adult or shall provide  
46 written reasons to the court for not making such a request. In  
47 all other cases, the state attorney may:

48 (a) File a petition for dependency;

49 (b) File a petition under chapter 984;

50 (c) File a petition for delinquency;

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

53 ~~(e) File an information under s. 985.557;~~

54 (e)~~(f)~~ Refer the case to a grand jury;

55 (f)~~(g)~~ Refer the child to a diversionary, pretrial  
56 intervention, arbitration, or mediation program, or to some  
57 other treatment or care program if such program commitment is  
58 voluntarily accepted by the child or the child's parents or

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59 legal guardian; or

60 (g)~~(h)~~ Decline to file.

61 Section 4. Subsection (5) of section 985.265, Florida  
62 Statutes, is amended to read:

63 985.265 Detention transfer and release; education; adult  
64 jails.—

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

67 (a) When the child has been transferred or indicted for  
68 criminal prosecution as an adult under part X, except that the  
69 court may not order or allow a child alleged to have committed a  
70 misdemeanor who is being transferred for criminal prosecution  
71 pursuant to ~~either s. 985.556 or s. 985.557~~ to be detained or  
72 held in a jail or other facility intended or used for the  
73 detention of adults; however, such child may be held temporarily  
74 in a detention facility; or

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

77  
78 The child shall be housed separately from adult inmates to  
79 prohibit a child from having regular contact with incarcerated  
80 adults, including trustees. "Regular contact" means sight and  
81 sound contact. Separation of children from adults shall permit  
82 no more than haphazard or accidental contact. The receiving jail  
83 or other facility shall contain a separate section for children  
84 and shall have an adequate staff to supervise and monitor the  
85 child's activities at all times. Supervision and monitoring of  
86 children includes physical observation and documented checks by  
87 jail or receiving facility supervisory personnel at intervals

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88 not to exceed 10 minutes. This subsection does not prohibit  
89 placing two or more children in the same cell. Under no  
90 circumstances shall a child be placed in the same cell with an  
91 adult.

92 Section 5. Subsection (3) of section 985.556, Florida  
93 Statutes, is amended to read:

94 985.556 Waiver of juvenile court jurisdiction; hearing.—

95 (3) INVOLUNTARY MANDATORY WAIVER.—

96 (a) If the child was 14 years of age or older, and if the  
97 child has been previously adjudicated delinquent for an act  
98 classified as a felony, which adjudication was for the  
99 commission of, attempt to commit, or conspiracy to commit  
100 murder, sexual battery, armed or strong-armed robbery,  
101 carjacking, home-invasion robbery, aggravated battery,  
102 aggravated assault, or burglary with an assault or battery, and  
103 the child is currently charged with a second or subsequent  
104 violent crime against a person; or

105 (b) If the child was 14 years of age or older at the time  
106 of commission of a fourth or subsequent alleged felony offense  
107 and the child was previously adjudicated delinquent or had  
108 adjudication withheld for or was found to have committed, or to  
109 have attempted or conspired to commit, three offenses that are  
110 felony offenses if committed by an adult, and one or more of  
111 such felony offenses involved the use or possession of a firearm  
112 or violence against a person;

113  
114 the state attorney shall request the court to transfer and  
115 certify the child for prosecution as an adult or shall provide  
116 written reasons to the court for not making such request, ~~or~~

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117 ~~proceed under s. 985.557(1)~~. Upon the state attorney's request,  
118 the court shall either enter an order transferring the case and  
119 certifying the case for trial as if the child were an adult or  
120 provide written reasons for not issuing such an order.

121 Section 6. Paragraphs (a) and (b) of subsection (4) of  
122 section 985.565, Florida Statutes, are amended to read:

123 985.565 Sentencing powers; procedures; alternatives for  
124 juveniles prosecuted as adults.—

125 (4) SENTENCING ALTERNATIVES.—

126 (a) *Adult sanctions*.—

127 1. Cases prosecuted on indictment.—If the child is found to  
128 have committed the offense punishable by death or life  
129 imprisonment, the child shall be sentenced as an adult. If the  
130 juvenile is not found to have committed the indictable offense  
131 but is found to have committed a lesser included offense or any  
132 other offense for which he or she was indicted as a part of the  
133 criminal episode, the court may sentence as follows:

134 a. As an adult;

135 b. Under chapter 958; or

136 c. As a juvenile under this section.

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

143 a. As an adult;

144 b. Under chapter 958; or

145 c. As a juvenile under this section.

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146           3. Notwithstanding any other provision to the contrary, if  
147 the state attorney is required to file a motion to transfer and  
148 certify the juvenile for prosecution as an adult under s.  
149 985.556(3) and that motion is granted, ~~or if the state attorney~~  
150 ~~is required to file an information under s. 985.557(2) (a) or~~  
151 ~~(b)~~, the court may ~~must~~ impose adult sanctions.

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

156           5. When a child has been transferred for criminal  
157 prosecution as an adult and has been found to have committed a  
158 violation of state law, the disposition of the case may include  
159 the enforcement of any restitution ordered in any juvenile  
160 proceeding.

161           (b) *Juvenile sanctions.*—For juveniles transferred to adult  
162 court but who do not qualify for such transfer under s.  
163 985.556(3) ~~or s. 985.557(2) (a) or (b)~~, the court may impose  
164 juvenile sanctions under this paragraph. If juvenile sentences  
165 are imposed, the court shall, under this paragraph, adjudge the  
166 child to have committed a delinquent act. Adjudication of  
167 delinquency shall not be deemed a conviction, nor shall it  
168 operate to impose any of the civil disabilities ordinarily  
169 resulting from a conviction. The court shall impose an adult  
170 sanction or a juvenile sanction and may not sentence the child  
171 to a combination of adult and juvenile punishments. An adult  
172 sanction or a juvenile sanction may include enforcement of an  
173 order of restitution or probation previously ordered in any  
174 juvenile proceeding. However, if the court imposes a juvenile

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175 sanction and the department determines that the sanction is  
176 unsuitable for the child, the department shall return custody of  
177 the child to the sentencing court for further proceedings,  
178 including the imposition of adult sanctions. Upon adjudicating a  
179 child delinquent under subsection (1), the court may:

180 1. Place the child in a probation program under the  
181 supervision of the department for an indeterminate period of  
182 time until the child reaches the age of 19 years or sooner if  
183 discharged by order of the court.

184 2. Commit the child to the department for treatment in an  
185 appropriate program for children for an indeterminate period of  
186 time until the child is 21 or sooner if discharged by the  
187 department. The department shall notify the court of its intent  
188 to discharge no later than 14 days prior to discharge. Failure  
189 of the court to timely respond to the department's notice shall  
190 be considered approval for discharge.

191 3. Order disposition under ss. 985.435, 985.437, 985.439,  
192 985.441, 985.45, and 985.455 as an alternative to youthful  
193 offender or adult sentencing if the court determines not to  
194 impose youthful offender or adult sanctions.

195  
196 It is the intent of the Legislature that the criteria and  
197 guidelines in this subsection are mandatory and that a  
198 determination of disposition under this subsection is subject to  
199 the right of the child to appellate review under s. 985.534.

200 Section 7. This act shall take effect October 1, 2015.