

1                   A bill to be entitled  
2           An act relating to charging youths as adults in  
3           criminal proceedings; amending s. 985.557, F.S.;  
4           specifying offenses that allow a state attorney to  
5           file an information for specified juvenile offenders;  
6           providing that certain open felony cases may also be  
7           transferred to the adult court; specifying the effects  
8           of a direct file; prohibiting certain juvenile  
9           offenders from being transferred to adult court;  
10          requiring the Department of Juvenile Justice to  
11          collect specified data related to specified juvenile  
12          offenders transferred to adult court; requiring a  
13          report; amending s. 985.56, F.S.; revising  
14          requirements for indictment of a juvenile for certain  
15          offenses; prohibiting certain juvenile offenders from  
16          being transferred to adult court; deleting provisions  
17          relating to sentencing of juveniles as adults for  
18          certain offenses; revising provisions relating to  
19          transfer of other pending felony charges when a child  
20          has been indicted; amending s. 985.565, F.S.; revising  
21          factors to be considered in determining whether to  
22          impose juvenile or adult sanctions for violations of  
23          law by a juvenile; requiring the court to consider  
24          specified reports in a hearing on such sentencing;  
25          providing for rights to examine the reports and  
26          question the parties responsible for them; revising

27 provisions relating to sentencing alternatives;  
 28 amending ss. 985.04 and 985.556, F.S.; conforming  
 29 cross-references; providing an effective date.

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

32  
 33 Section 1. Section 985.557, Florida Statutes, is amended  
 34 to read:

35 (Substantial rewording of section. See  
 36 s. 985.557, F.S., for present text.)  
 37 985.557 Direct filing of an information.—

38 (1) DIRECT FILE.—

39 (a) With respect to a child who was 16 years of age or  
 40 older but less than 18 years of age at the time the alleged  
 41 offense was committed, the state attorney may file an  
 42 information when, in the state attorney's judgment and  
 43 discretion, the public interest requires that adult sanctions be  
 44 considered and when the offense charged is for the commission of  
 45 or attempt to commit:

- 46 1. Murder;
- 47 2. Manslaughter;
- 48 3. Sexual battery;
- 49 4. Armed robbery;
- 50 5. Aggravated assault with a firearm;
- 51 6. Aggravated child abuse;
- 52 7. Aggravated stalking;

- 53        8. Kidnapping;
- 54        9. Unlawful throwing, placing, or discharging of a
- 55        destructive device or bomb;
- 56        10. Aggravated battery resulting in great bodily harm,
- 57        permanent disability, or permanent disfigurement;
- 58        11. Carrying, displaying, using, or threatening or
- 59        attempting to use a weapon or firearm in furtherance of the
- 60        commission of a felony; however, such use or threatened use does
- 61        not include the mere acquisition of a weapon or firearm during
- 62        the felony;
- 63        12. Possessing or discharging a firearm on school property
- 64        in violation of s. 790.115;
- 65        13. Home invasion robbery;
- 66        14. Carjacking;
- 67        15. Aggravated animal cruelty;
- 68        16. DUI resulting in fatality, great bodily harm,
- 69        permanent disability, or permanent disfigurement to a person
- 70        other than the accused;
- 71        17. Criminal use of personal identification information in
- 72        violation of s. 817.568(2)(b) or (c); or
- 73        18. Arson in violation of s. 806.031(2).
- 74        (b) With respect to a child who was 14 years of age or
- 75        older but less than 16 years of age at the time the alleged
- 76        offense was committed, the state attorney may file an
- 77        information when, in the state attorney's judgment and
- 78        discretion, the public interest requires that adult sanctions be

79 considered and when the offense charged is for the commission of  
80 or attempt to commit:

- 81 1. Murder;
- 82 2. Manslaughter; or
- 83 3. Sexual battery.

84 (2) EFFECT OF DIRECT FILE.—When a child is transferred for  
85 criminal prosecution as an adult, the court may transfer and  
86 certify to the adult circuit court for prosecution of the child  
87 as an adult all related felony cases pertaining to the child  
88 which have not yet resulted in a plea of guilty or nolo  
89 contendere or in which a finding of guilt has not been made. If  
90 the child is acquitted of all charged offenses or lesser  
91 included offenses contained in the original case transferred to  
92 adult court, any felony cases that were transferred to adult  
93 court under this subsection shall be subject to the same  
94 penalties such cases were subject to before being transferred to  
95 adult court.

96 (3) TRANSFER PROHIBITION.—Notwithstanding any other  
97 provision of law, a child who is eligible for direct file may  
98 not be transferred to adult court for criminal prosecution if he  
99 or she:

- 100 (a) Has a pending competency hearing in juvenile court; or
- 101 (b) Has been previously found to be incompetent to proceed  
102 and has not subsequently been found by a court to have attained  
103 competency.

104 (4) EXCEPTION.—This section does not preclude the state  
 105 attorney from seeking to transfer a child for criminal  
 106 prosecution pursuant to s. 985.556.

107 (5) DATA COLLECTION RELATING TO DIRECT FILE.—

108 (a) The department shall collect data regarding children  
 109 who qualify for direct file under subsection (1), including, but  
 110 not limited to:

- 111 1. Age.
- 112 2. Race and ethnicity.
- 113 3. Gender.
- 114 4. Circuit and county of residence.
- 115 5. Circuit and county of offense.
- 116 6. Prior adjudicated offenses.
- 117 7. Prior periods of probation.
- 118 8. Previous contacts with law enforcement agencies or the  
 119 courts.
- 120 9. Initial charges.
- 121 10. Charges at disposition.
- 122 11. Whether adult codefendants were involved.
- 123 12. Whether child codefendants were involved who were  
 124 transferred to adult court.
- 125 13. Whether the child was represented by counsel.
- 126 14. Whether the child had waived counsel.
- 127 15. Risk assessment instrument score.
- 128 16. The child's medical, mental health, substance abuse,  
 129 or trauma history.

130        17. The child's history of physical or mental impairment  
131 or disability-related accommodations.

132        18. The child's history of abuse or neglect.

133        19. The child's history of foster care placements,  
134 including the number of prior placements.

135        20. Whether the child has experienced a failed adoption.

136        21. Whether the child has fetal alcohol syndrome or was  
137 exposed to controlled substances at birth.

138        22. Whether the child has below-average intellectual  
139 functioning or is eligible for exceptional student education  
140 services.

141        23. Whether the child has received mental health services  
142 or treatment.

143        24. Whether the child has been the subject of a CINS/FINS  
144 or dependency petition.

145        25. Plea offers made by the state and the outcome of any  
146 plea offers.

147        26. Whether the child was transferred for criminal  
148 prosecution as an adult.

149        27. The case resolution in juvenile court.

150        28. The case resolution in adult court.

151        (b) When a child is transferred for criminal prosecution  
152 as an adult, the department shall also collect disposition data,  
153 including, but not limited to, whether the child received adult  
154 sanctions, youthful offender sanctions, juvenile sanctions, or

155 diversion, and, if sentenced to prison, the length of prison  
156 sentence or enhanced sentence.

157 (c) The department shall annually provide a report  
158 analyzing this aggregated data to the President of the Senate  
159 and the Speaker of the House of Representatives.

160 Section 2. Section 985.56, Florida Statutes, is amended to  
161 read:

162 985.56 Indictment of a juvenile.—

163 (1) With respect to a child who is 13 years of age or  
164 older but less than 18 years of age at the time the alleged  
165 offense was committed, the state attorney may seek an indictment  
166 before a grand jury when, in the state attorney's judgment and  
167 discretion, the public interest requires that adult sanctions be  
168 considered and when the offense charged is for the commission of  
169 or attempt to commit murder, manslaughter, or sexual battery.

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

177 (a) On the indicting offense ~~punishable by death or by~~  
178 ~~life imprisonment~~; and

179 (b) On all other felonies or misdemeanors charged in the  
180 indictment which are based on the same act or transaction as the

181 ~~indicting~~ offense ~~punishable by death or by life imprisonment or~~  
 182 ~~on one or more acts or transactions connected with the offense~~  
 183 ~~punishable by death or by life imprisonment.~~

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

194 (3) Notwithstanding any other provision of law, a child  
 195 who is eligible for indictment may not be transferred to adult  
 196 court for criminal prosecution if he or she:

- 197 (a) Has a pending competency hearing in juvenile court; or
- 198 (b) Has been previously found to be incompetent to proceed  
 199 and has not subsequently been found by a court to have attained  
 200 competency.

201 ~~(3) If the child is found to have committed the offense~~  
 202 ~~punishable by death or by life imprisonment, the child shall be~~  
 203 ~~sentenced as an adult. If the juvenile is not found to have~~  
 204 ~~committed the indictable offense but is found to have committed~~  
 205 ~~a lesser included offense or any other offense for which he or~~  
 206 ~~she was indicted as a part of the criminal episode, the court~~



207 ~~may sentence under s. 985.565.~~

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

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

225 Section 3. Subsection (1), paragraph (c) of subsection  
 226 (3), and subsection (4) of section 985.565, Florida Statutes,  
 227 are amended to read:

228 985.565 Sentencing powers; procedures; alternatives for  
 229 juveniles prosecuted as adults.—

230 (1) POWERS OF DISPOSITION.—

231 (a) A child who is found to have committed a violation of  
 232 law may, as an alternative to adult dispositions, be committed

233 to the department for treatment in an appropriate program for  
234 children outside the adult correctional system or be placed on  
235 juvenile probation.

236 (b) In determining whether to impose juvenile sanctions or  
237 ~~instead of~~ adult sanctions, the court shall consider the  
238 following criteria:

239 1. The seriousness of the offense to the community and  
240 whether the protection of the community would be best served ~~be~~  
241 ~~protected~~ by juvenile or adult sanctions.

242 2. The extent of the child's participation or role in the  
243 offense.

244 3. The effect, if any, of familial or peer pressure on the  
245 child's actions.

246 4.2. Whether the offense was committed in an aggressive,  
247 violent, premeditated, or willful manner.

248 5.3. Whether the offense was against persons or against  
249 property, with greater weight being given to offenses against  
250 persons, especially if personal injury resulted.

251 6.4. The sophistication and maturity of the child,  
252 including:

253 a. The child's age, intellectual capacity, and mental and  
254 emotional health at the time of the offense.

255 b. The child's background, including his or her family,  
256 home, and community environment.

257 c. The effect, if any, of immaturity, impetuosity, or  
258 failure to appreciate the risks and consequences on the child's

259 participation in the offense.

260 d. The effect, if any, of characteristics attributable to  
 261 the child's age on the child's judgment ~~offender.~~

262 ~~7.5.~~ The record and previous history of the offender,  
 263 including:

264 a. Previous contacts with the Department of Corrections,  
 265 the Department of Juvenile Justice, the former Department of  
 266 Health and Rehabilitative Services, and the Department of  
 267 Children and Families and the adequacy and appropriateness of  
 268 the services provided to address the child's needs, ~~law~~  
 269 ~~enforcement agencies, and the courts.~~

270 b. Prior periods of probation.

271 c. Prior adjudications that the offender committed a  
 272 delinquent act or violation of law as a child.

273 d. Prior commitments to the Department of Juvenile  
 274 Justice, the former Department of Health and Rehabilitative  
 275 Services, the Department of Children and Families, or other  
 276 facilities or institutions and the adequacy and appropriateness  
 277 of the services provided to address the child's needs.

278 e. Previous contacts with law enforcement agencies and the  
 279 courts.

280 f. History of abuse, abandonment, or neglect.

281 g. Identification of the child as having a mental,  
 282 physical, or intellectual or developmental disability or having  
 283 previously received mental health services or treatment.

284 ~~8.6.~~ The prospects for adequate protection of the public

285 and the likelihood of deterrence and reasonable rehabilitation  
 286 of the offender if assigned to services and facilities of the  
 287 Department of Juvenile Justice.

288 ~~9.7.~~ Whether the Department of Juvenile Justice has  
 289 appropriate programs, facilities, and services immediately  
 290 available.

291 10. Whether the Department of Corrections has appropriate  
 292 programs, facilities, and services immediately available.

293 (c) The adult court shall render an order including  
 294 specific findings of fact and the reasons for its decision. The  
 295 order shall be reviewable on appeal under s. 985.534 and the  
 296 Florida Rules of Appellate Procedure.

297 ~~8. Whether adult sanctions would provide more appropriate~~  
 298 ~~punishment and deterrence to further violations of law than the~~  
 299 ~~imposition of juvenile sanctions.~~

300 (3) SENTENCING HEARING.—

301 (c) The court may receive and consider any other relevant  
 302 and material evidence, including other reports, written or oral,  
 303 in its effort to determine the action to be taken with regard to  
 304 the child, and may rely upon such evidence to the extent of its  
 305 probative value even if the evidence would not be competent in  
 306 an adjudicatory hearing. The court shall consider any reports  
 307 that may assist it, including, but not limited to, prior  
 308 predisposition reports, psychosocial assessments, individual  
 309 education plans, developmental assessments, school records,  
 310 abuse or neglect reports, home studies, protective

311 investigations, and psychological or psychiatric evaluations.  
312 The child, the child's defense counsel, and the state attorney  
313 have the right to examine these reports and to question the  
314 parties responsible for them at the hearing.

315 (4) SENTENCING ALTERNATIVES.—

316 (a) ~~Adult~~ Sanctions.—

317 ~~1. Cases prosecuted on indictment.—If the child is found~~  
318 ~~to have committed the offense punishable by death or life~~  
319 ~~imprisonment, the child shall be sentenced as an adult. If the~~  
320 ~~juvenile is not found to have committed the indictable offense~~  
321 ~~but is found to have committed a lesser included offense or any~~  
322 ~~other offense for which he or she was indicted as a part of the~~  
323 ~~criminal episode, the court may sentence as follows:~~

324 ~~a. As an adult;~~

325 ~~b. Under chapter 958; or~~

326 ~~c. As a juvenile under this section.~~

327 ~~2. Other cases.—If a child who has been transferred for~~  
328 ~~criminal prosecution pursuant to information, indictment, or~~  
329 ~~waiver of juvenile court jurisdiction is found to have committed~~  
330 ~~a violation of state law or a lesser included offense for which~~  
331 ~~he or she was charged as a part of the criminal episode, the~~  
332 ~~court may sentence as follows:~~

333 ~~1.a.~~ As an adult;

334 ~~2.b.~~ As a youthful offender under chapter 958; or

335 ~~3.c.~~ As a juvenile under this section.

336 ~~3. Notwithstanding any other provision to the contrary, if~~

337 ~~the state attorney is required to file a motion to transfer and~~  
338 ~~certify the juvenile for prosecution as an adult under s.~~  
339 ~~985.556(3) and that motion is granted, or if the state attorney~~  
340 ~~is required to file an information under s. 985.557(2)(a) or~~  
341 ~~(b), the court must impose adult sanctions.~~

342 (b)4. Findings.~~The court must~~ Any sentence imposing adult  
343 ~~sanctions is presumed appropriate, and the court is not required~~  
344 ~~to~~ set forth specific findings or enumerate the criteria in this  
345 subsection as any basis for its decision to impose adult,  
346 youthful offender, or juvenile sanctions.

347 (c)5. Restitution.~~When a child has been transferred for~~  
348 ~~criminal prosecution as an adult and has been found to have~~  
349 ~~committed a violation of state law, the disposition of the case~~  
350 ~~may include the enforcement of any restitution ordered in any~~  
351 ~~juvenile proceeding.~~

352 (d)(b) Juvenile sanctions.~~If a juvenile sentence is For~~  
353 ~~juveniles transferred to adult court but who do not qualify for~~  
354 ~~such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b),~~  
355 ~~the court may impose juvenile sanctions under this paragraph. If~~  
356 ~~juvenile sentences are imposed, the court shall, under this~~  
357 ~~paragraph, adjudge the child to have committed a delinquent act.~~  
358 Adjudication of delinquency shall not be deemed a conviction,  
359 nor shall it operate to impose any of the civil disabilities  
360 ordinarily resulting from a conviction. ~~The court shall impose~~  
361 ~~an adult sanction or a juvenile sanction and may not sentence~~  
362 ~~the child to a combination of adult and juvenile punishments. An~~

363 adult sanction or a juvenile sanction may include enforcement of  
364 an order of restitution or probation previously ordered in any  
365 juvenile proceeding. ~~However, if the court imposes a juvenile~~  
366 ~~sanction and the department determines that the sanction is~~  
367 ~~unsuitable for the child, the department shall return custody of~~  
368 ~~the child to the sentencing court for further proceedings,~~  
369 ~~including the imposition of adult sanctions.~~ Upon adjudicating a  
370 child delinquent under subsection (1), the court may:

371 1. Place the child in a probation program under the  
372 supervision of the department for an indeterminate period of  
373 time until the child reaches the age of 19 years or sooner if  
374 discharged by order of the court.

375 2. Commit the child to the department for treatment in an  
376 appropriate program for children for an indeterminate period of  
377 time until the child is 21 or sooner if discharged by the  
378 department. The department shall notify the court of its intent  
379 to discharge no later than 14 days prior to discharge. Failure  
380 of the court to timely respond to the department's notice shall  
381 be considered approval for discharge.

382 3. Order disposition under ss. 985.435, 985.437, 985.439,  
383 985.441, 985.45, and 985.455 as an alternative to youthful  
384 offender or adult sentencing if the court determines not to  
385 impose youthful offender or adult sanctions.

386 (e) ~~(e)~~ Adult sanctions upon failure of juvenile  
387 sanctions.—If a child proves not to be suitable to a commitment  
388 program, juvenile probation program, or treatment program under

389 paragraph (d) ~~(b)~~, the department shall provide the sentencing  
390 court with a written report outlining the basis for its  
391 objections to the juvenile sanction and shall simultaneously  
392 provide a copy of the report to the state attorney and the  
393 defense counsel. The department shall schedule a hearing within  
394 30 days. Upon hearing, the court may revoke the previous  
395 adjudication, impose an adjudication of guilt, and impose any  
396 sentence which it may lawfully impose, giving credit for all  
397 time spent by the child in the department. The court may also  
398 classify the child as a youthful offender under s. 958.04, if  
399 appropriate. For purposes of this paragraph, a child may be  
400 found not suitable to a commitment program, community control  
401 program, or treatment program under paragraph (d) ~~(b)~~ if the  
402 child commits a new violation of law while under juvenile  
403 sanctions, if the child commits any other violation of the  
404 conditions of juvenile sanctions, or if the child's actions are  
405 otherwise determined by the court to demonstrate a failure of  
406 juvenile sanctions.

407 (f) ~~(d)~~ Further proceedings heard in adult court.—When a  
408 child is sentenced to juvenile sanctions, further proceedings  
409 involving those sanctions shall continue to be heard in the  
410 adult court.

411 (g) ~~(e)~~ School attendance.—If the child is attending or is  
412 eligible to attend public school and the court finds that the  
413 victim or a sibling of the victim in the case is attending or  
414 may attend the same school as the child, the court placement



415 order shall include a finding pursuant to the proceeding  
 416 described in s. 985.455(2), regardless of whether adjudication  
 417 is withheld.

418  
 419 It is the intent of the Legislature that the criteria and  
 420 guidelines in this subsection are mandatory and that a  
 421 determination of disposition under this subsection is subject to  
 422 the right of the child to appellate review under s. 985.534.

423 Section 4. Paragraph (d) of subsection (2) of section  
 424 985.04, Florida Statutes, is amended to read:

425 985.04 Oaths; records; confidential information.—

426 (2) Notwithstanding any other provisions of this chapter,  
 427 the name, photograph, address, and crime or arrest report of a  
 428 child:

429 (d) Taken into custody by a law enforcement officer for a  
 430 violation of law subject to s. 985.557(1)(a) or (b)

431 ~~985.557(2)(b) or (d); or~~

432  
 433 shall not be considered confidential and exempt from s.  
 434 119.07(1) solely because of the child's age.

435 Section 5. Subsection (1) of section 985.556, Florida  
 436 Statutes, is amended to read:

437 985.556 Waiver of juvenile court jurisdiction; hearing.—

438 (1) VOLUNTARY WAIVER.—The court shall transfer and certify  
 439 a child's criminal case for trial as an adult if the child is  
 440 alleged to have committed a violation of law and, prior to the

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441 commencement of an adjudicatory hearing, the child, joined by a  
442 parent or, in the absence of a parent, by the guardian or  
443 guardian ad litem, demands in writing to be tried as an adult.  
444 Once a child has been transferred for criminal prosecution  
445 pursuant to a voluntary waiver hearing and has been found to  
446 have committed the presenting offense or a lesser included  
447 offense, the child shall be handled thereafter in every respect  
448 as an adult for any subsequent violation of state law, unless  
449 the court imposes juvenile sanctions under s. 985.565(4)(d)  
450 ~~985.565(4)(b)~~.

451 Section 6. This act shall take effect July 1, 2015.