



382004

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2019	.	
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The Committee on Appropriations (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 5058 - 5061
and insert:

Section 80. Subsection (5) of section 985.265, Florida
Statutes, is amended to read:

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

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



382004

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

13 1. The court may not order or allow a child alleged to have
14 committed a misdemeanor who is being transferred for criminal
15 prosecution pursuant to either s. 985.556 or s. 985.557 to be
16 detained or held in a jail or other facility intended or used
17 for the detention of adults; however, such child may be held
18 temporarily in a detention facility; or

19 2. A child who has been transferred for criminal
20 prosecution as an adult pursuant to s. 985.557 shall not be held
21 in a jail or other facility intended or used for the detention
22 of adults prior to a court finding as a result of a hearing
23 provided for in s. 985.557(2) that the child should be
24 prosecuted as an adult; or

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

27
28 The child shall be housed separately from adult inmates to
29 prohibit a child from having regular contact with incarcerated
30 adults, including trustees. "Regular contact" means sight and
31 sound contact. Separation of children from adults shall permit
32 no more than haphazard or accidental contact. The receiving jail
33 or other facility shall contain a separate section for children
34 and shall have an adequate staff to supervise and monitor the
35 child's activities at all times. Supervision and monitoring of
36 children includes physical observation and documented checks by
37 jail or receiving facility supervisory personnel at intervals
38 not to exceed 10 minutes. This subsection does not prohibit
39 placing two or more children in the same cell. Under no



382004

circumstances shall a child be placed in the same cell with an adult.

Section 81. For the purpose of incorporating the amendment made by this act to section 985.557, Florida Statutes, in a reference thereto, subsection (3) of section 985.556, Florida Statutes, is reenacted to read:

985.556 Waiver of juvenile court jurisdiction; hearing.—

(3) INVOLUNTARY MANDATORY WAIVER.—

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

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

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



382004

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

73 Section 82. Subsection (1) and present subsection (2) of
74 section 985.557, Florida Statutes, are amended, and a new
75 subsection (2) is added to that section, to read:

76 985.557 Direct filing of an information; discretionary ~~and~~
77 ~~mandatory~~ criteria.—

78 (1) DISCRETIONARY DIRECT FILE.—

79 (a) With respect to any child who was 14 or 15 years of age
80 at the time the alleged offense was committed, the state
81 attorney may file an information when ~~in the state attorney's~~
82 ~~judgment and discretion~~ the public interest requires that adult
83 sanctions be considered or imposed and when the offense charged
84 is for the commission of, or attempt to commit any of the
85 following, ~~or conspiracy to commit~~:

- 86 1. Arson.†
- 87 2. Sexual battery.†
- 88 3. Robbery.†
- 89 4. Kidnapping.†
- 90 5. Aggravated child abuse.†
- 91 6. Aggravated assault.†
- 92 7. Aggravated stalking.†
- 93 8. Murder.†
- 94 9. Manslaughter.†
- 95 10. Unlawful throwing, placing, or discharging of a
96 destructive device or bomb.†
- 97 11. Armed burglary in violation of s. 810.02(2)(b) or



382004

specified burglary of a dwelling or structure in violation of s.
810.02(2)(c), or burglary with an assault or battery in
violation of s. 810.02(2)(a).~~+~~

12. Aggravated battery.~~+~~

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

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

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

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

17. Home invasion robbery.~~+~~

18. Carjacking.~~+~~~~or~~

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

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

(2) DUE PROCESS HEARING BEFORE A JUDGE.—Notwithstanding any



382004

other law, and in all cases, any child charged with a crime shall have an evidentiary hearing, after the state attorney's filing of an information in adult court under this section.

(a) The judge shall conduct the hearing within 30 days, excluding Saturdays, Sundays, and legal holidays, unless good cause is shown for a delay by the child or the child's attorney. The purpose of the hearing is for the court to determine whether it is necessary for protection of the community that the child is prosecuted in adult court. The judge shall consider all of the following:

1. Evaluations and assessments completed by the department.

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

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

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

c. The effect, if any, of characteristics attributable to the child's youth on the child's judgment.

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

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

b. Prior periods of probation.

c. Prior adjudications that the child committed a delinquent act or violation of law, with greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving violence to persons.



382004

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

e. History of trauma, abuse or neglect, foster care placements, failed adoption, fetal alcohol syndrome, exposure to controlled substances at birth, and below-average intellectual functioning.

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

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

a. Whether the alleged offense is punishable by death or life imprisonment.

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

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

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

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

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

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

b. By the use of procedures, services, and facilities currently available to the adult court, including whether the



382004

lowest permissible sentence under the Criminal Punishment Code
is a nonstate prison sanction.

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

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

8. Whether the child's best interests would be served by
prosecuting the child in juvenile court.

(b) The judge may consider any reports that may assist the
court, including prior pre-disposition reports, psycho-social
assessments, individualized educational programs (IEPs),
developmental assessments, school records, abuse or neglect
reports, home studies, protective investigations, and
psychological and psychiatric evaluations. The child, the
child's parents or legal guardians, defense counsel, and the
state attorney may examine these reports and question the
parties responsible for creating them at the hearing.

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

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



382004

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 521

and insert:

specified instances; amending s. 985.265, F.S.;

revising provisions concerning the housing of children held in detention; prohibiting a child who has been transferred to adult court for criminal prosecution pursuant to direct file from being held in a jail or other facility used for the detention of adults prior to a hearing to determine if the child should remain in adult court; reenacting s. 985.556(3), F.S., relating to involuntary mandatory waiver, to incorporate the amendment made to s. 985.557, F.S., in a reference thereto ; amending s. 985.557, F.S.;

deleting references to the state attorney's discretion to direct file a juvenile; revising discretionary direct file criteria; deleting provisions for mandatory direct file; providing for an opportunity for a hearing to reverse a direct file;