

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Bush offered the following:

**Amendment (with title amendment)**

Remove lines 5401-5481 and insert:

Section 75. Subsections (1) and (2) of section 985.557, Florida Statutes, are amended to read:

985.557 Direct filing of an information; discretionary ~~and mandatory~~ criteria.-

(1) DISCRETIONARY DIRECT FILE.-

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

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14 sanctions be considered or imposed and when the offense charged  
15 is for the commission of or, attempt to commit, ~~or conspiracy to~~  
16 ~~commit~~:

- 17 1. Arson;
- 18 2. Sexual battery;
- 19 3. Robbery;
- 20 4. Kidnapping;
- 21 5. Aggravated child abuse;
- 22 6. Aggravated assault;
- 23 7. Aggravated stalking;
- 24 8. Murder;
- 25 9. Manslaughter;
- 26 10. Unlawful throwing, placing, or discharging of a  
27 destructive device or bomb;
- 28 11. Armed burglary in violation of s. 810.02(2)(b) or  
29 specified burglary of a dwelling or structure in violation of s.  
30 810.02(2)(c), or burglary with an assault or battery in  
31 violation of s. 810.02(2)(a);
- 32 12. Aggravated battery;
- 33 13. Any lewd or lascivious offense committed upon or in  
34 the presence of a person less than 16 years of age;
- 35 14. Carrying, displaying, using, threatening, or  
36 attempting to use a weapon or firearm during the commission of a  
37 felony;
- 38 15. Grand theft in violation of s. 812.014(2)(a);

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39 16. Possessing or discharging any weapon or firearm on  
40 school property in violation of s. 790.115;

41 17. Home invasion robbery;

42 18. Carjacking; or

43 19. Grand theft of a motor vehicle in violation of s.  
44 812.014(2)(c)6. or grand theft of a motor vehicle valued at  
45 \$20,000 or more in violation of s. 812.014(2)(b) if the child  
46 has a previous adjudication for grand theft of a motor vehicle  
47 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

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

58 (2) DUE PROCESS HEARING BEFORE A JUDGE.—Notwithstanding  
59 any other law, and in all cases, any child charged with a crime  
60 shall have an evidentiary hearing, after the state attorney's  
61 filing of an information in adult court under this section.

62 (a) The judge shall conduct the hearing within 30 days,  
63 excluding Saturdays, Sundays, and legal holidays, unless good

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64 cause is shown for a delay by the child or the child's attorney.  
65 The purpose of the hearing is for the court to determine whether  
66 it is necessary for protection of the community that the child  
67 is prosecuted in adult court. The judge shall consider:  
68 1. Evaluations and assessments completed by the  
69 department.  
70 2. The sophistication and maturity of the child,  
71 including:  
72 a. The effect, if any, of immaturity, impetuosity, or  
73 failure to appreciate risks and consequences on the child's  
74 participation in the offense.  
75 b. The child's age, maturity, intellectual capacity, and  
76 mental and emotional health at the time of the offense.  
77 c. The effect, if any, of characteristics attributable to  
78 the child's youth on the child's judgment.  
79 3. The record and previous history of the child,  
80 including:  
81 a. Previous contacts with the department, the Department  
82 of Corrections, the Department of Children and Families, other  
83 law enforcement agencies, and the courts.  
84 b. Prior periods of probation.  
85 c. Prior adjudications that the child committed a  
86 delinquent act or violation of law, with greater weight being  
87 given if the child has previously been found by a court to have

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88 committed a delinquent act or violation of law involving  
89 violence to persons.

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

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

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

100 g. Whether the child has previously been convicted and  
101 sentenced as an adult.

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

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

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

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

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

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

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

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

118 b. By the use of procedures, services, and facilities  
119 currently available to the adult court, including whether the  
120 lowest permissible sentence under the Criminal Punishment Code  
121 is a nonstate prison sanction.

122 6. Cost-effective alternatives available to divert the  
123 child from the criminal and juvenile justice systems and offer  
124 rehabilitative services for the child.

125 7. Whether the child could obtain habilitative or  
126 rehabilitative services available in the juvenile justice  
127 system.

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

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

133 (b) The judge may consider any reports that may assist the  
134 court, including prior pre-disposition reports, psycho-social  
135 assessments, individualized educational programs (IEPs),  
136 developmental assessments, school records, abuse or neglect  
137 reports, home studies, protective investigations, and

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138 psychological and psychiatric evaluations. The child, the  
139 child's parents or legal guardians, defense counsel, and the  
140 state attorney may examine these reports and question the  
141 parties responsible for them at the hearing.

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

146 (d) The adult court shall render an order including  
147 specific findings of fact and the reasons for its decision. The  
148 prosecution and defense may seek immediate review of the order  
149 through interlocutory appeal. The order shall be reviewable on  
150 appeal under s. 985.534 and the Florida Rules of Appellate  
151 Procedure.

152 ~~(2) MANDATORY DIRECT FILE.~~

153 ~~(a) With respect to any child who was 16 or 17 years of~~  
154 ~~age at the time the alleged offense was committed, the state~~  
155 ~~attorney shall file an information if the child has been~~  
156 ~~previously adjudicated delinquent for an act classified as a~~  
157 ~~felony, which adjudication was for the commission of, attempt to~~  
158 ~~commit, or conspiracy to commit murder, sexual battery, armed or~~  
159 ~~strong-armed robbery, carjacking, home-invasion robbery,~~  
160 ~~aggravated battery, or aggravated assault, and the child is~~  
161 ~~currently charged with a second or subsequent violent crime~~  
162 ~~against a person.~~

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163 ~~(b) With respect to any child 16 or 17 years of age at the~~  
164 ~~time an offense classified as a forcible felony, as defined in~~  
165 ~~s. 776.08, was committed, the state attorney shall file an~~  
166 ~~information if the child has previously been adjudicated~~  
167 ~~delinquent or had adjudication withheld for three acts~~  
168 ~~classified as felonies each of which occurred at least 45 days~~  
169 ~~apart from each other. This paragraph does not apply when the~~  
170 ~~state attorney has good cause to believe that exceptional~~  
171 ~~circumstances exist which preclude the just prosecution of the~~  
172 ~~juvenile in adult court.~~

173 ~~(c) The state attorney must file an information if a~~  
174 ~~child, regardless of the child's age at the time the alleged~~  
175 ~~offense was committed, is alleged to have committed an act that~~  
176 ~~would be a violation of law if the child were an adult, that~~  
177 ~~involves stealing a motor vehicle, including, but not limited~~  
178 ~~to, a violation of s. 812.133, relating to carjacking, or s.~~  
179 ~~812.014(2)(c)6., relating to grand theft of a motor vehicle, and~~  
180 ~~while the child was in possession of the stolen motor vehicle~~  
181 ~~the child caused serious bodily injury to or the death of a~~  
182 ~~person who was not involved in the underlying offense. For~~  
183 ~~purposes of this section, the driver and all willing passengers~~  
184 ~~in the stolen motor vehicle at the time such serious bodily~~  
185 ~~injury or death is inflicted shall also be subject to mandatory~~  
186 ~~transfer to adult court. "Stolen motor vehicle," for the~~  
187 ~~purposes of this section, means a motor vehicle that has been~~

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188 ~~the subject of any criminal wrongful taking. For purposes of~~  
189 ~~this section, "willing passengers" means all willing passengers~~  
190 ~~who have participated in the underlying offense.~~

191 ~~(d)1. With respect to any child who was 16 or 17 years of~~  
192 ~~age at the time the alleged offense was committed, the state~~  
193 ~~attorney shall file an information if the child has been charged~~  
194 ~~with committing or attempting to commit an offense listed in s.~~  
195 ~~775.087(2) (a)1.a. p., and, during the commission of or attempt~~  
196 ~~to commit the offense, the child:~~

197 ~~a. Actually possessed a firearm or destructive device, as~~  
198 ~~those terms are defined in s. 790.001.~~

199 ~~b. Discharged a firearm or destructive device, as~~  
200 ~~described in s. 775.087(2) (a)2.~~

201 ~~e. Discharged a firearm or destructive device, as~~  
202 ~~described in s. 775.087(2) (a)3., and, as a result of the~~  
203 ~~discharge, death or great bodily harm was inflicted upon any~~  
204 ~~person.~~

205 ~~2. Upon transfer, any child who is:~~

206 ~~a. Charged under sub-subparagraph 1.a. and who has been~~  
207 ~~previously adjudicated or had adjudication withheld for a~~  
208 ~~forcible felony offense or any offense involving a firearm, or~~  
209 ~~who has been previously placed in a residential commitment~~  
210 ~~program, shall be subject to sentencing under s. 775.087(2) (a),~~  
211 ~~notwithstanding s. 985.565.~~

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212 ~~b. Charged under sub-subparagraph 1.b. or sub-subparagraph~~  
213 ~~1.c., shall be subject to sentencing under s. 775.087(2) (a),~~  
214 ~~notwithstanding s. 985.565.~~

215 ~~3. Upon transfer, any child who is charged under this~~  
216 ~~paragraph, but who does not meet the requirements specified in~~  
217 ~~subparagraph 2., shall be sentenced under s. 985.565; however,~~  
218 ~~if the court imposes a juvenile sanction, the court must commit~~  
219 ~~the child to a high risk or maximum risk juvenile facility.~~

220 ~~4. This paragraph shall not apply if the state attorney~~  
221 ~~has good cause to believe that exceptional circumstances exist~~  
222 ~~that preclude the just prosecution of the child in adult court.~~

223 ~~5. The Department of Corrections shall make every~~  
224 ~~reasonable effort to ensure that any child 16 or 17 years of age~~  
225 ~~who is convicted and sentenced under this paragraph be~~  
226 ~~completely separated such that there is no physical contact with~~  
227 ~~adult offenders in the facility, to the extent that it is~~  
228 ~~consistent with chapter 958.~~

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230  
231

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

232 Remove lines 424-426 and insert:  
233 s. 985.557, F.S.; deleting references to the state attorney's  
234 discretion to direct file a juvenile; revising discretionary  
235 direct file criteria; deleting provisions for mandatory direct  
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237 | file; providing for an opportunity for a hearing to reverse a  
238 | direct file; amending

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