

HB 461

2014

1 A bill to be entitled

2 An act relating to prosecution of juveniles; amending
3 s. 985.557, F.S.; revising the age-based criteria and
4 the offenses for which the discretionary direct file
5 of an information against a child may be made in adult
6 court; prohibiting the filing of an information on a
7 child otherwise eligible if it is the child's first
8 offense unless there are compelling reasons; requiring
9 such reasons to be stated in writing; providing
10 criteria for a state attorney to determine whether to
11 file an information; requiring a state attorney to
12 file a written explanation when an information is
13 filed; providing criteria for consideration of a
14 child's request to an adult court to return a criminal
15 case to the juvenile justice system; providing an
16 effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Subsection (1) of section 985.557, Florida
21 Statutes, is amended, subsection (4) is renumbered as subsection
22 (6) and amended, and new subsections (4) and (5) are added to
23 that section, to read:

24 985.557 Direct filing of an information; discretionary and
25 mandatory criteria.—

26 (1) DISCRETIONARY DIRECT FILE.—

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27 (a) With respect to any child who was 14 ~~or 15~~ years of
28 age or older at the time the alleged offense was committed, the
29 state attorney may file an information when in the state
30 attorney's judgment and discretion the public interest requires
31 that adult sanctions be considered or imposed and when the
32 offense charged is for the commission of, attempt to commit, or
33 conspiracy to commit:

- 34 1. Arson;
- 35 2. Sexual battery;
- 36 3. Robbery;
- 37 4. Kidnapping;
- 38 5. Aggravated child abuse;
- 39 6. Aggravated assault;
- 40 7. Aggravated stalking;
- 41 8. Murder;
- 42 9. Manslaughter;
- 43 10. Unlawful throwing, placing, or discharging of a
44 destructive device or bomb;
- 45 11. Armed burglary in violation of s. 810.02(2)(b) or
46 specified burglary of a dwelling or structure in violation of s.
47 810.02(2)(c), or burglary with an assault or battery in
48 violation of s. 810.02(2)(a);
- 49 12. Aggravated battery;
- 50 13. Any lewd or lascivious offense committed upon or in
51 the presence of a person less than 16 years of age;
- 52 14. Carrying, displaying, using, threatening, or

53 attempting to use a weapon or firearm during the commission of a
 54 felony;

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

56 15.16. Possessing or discharging any weapon or firearm on
 57 school property in violation of s. 790.115;

58 16.17. Home invasion robbery;

59 17.18. Carjacking; or

60 18.19. Grand theft of a motor vehicle in violation of s.
 61 812.014(2)(c)6. or grand theft of a motor vehicle valued at
 62 \$20,000 or more in violation of s. 812.014(2)(b) if the child
 63 has a previous adjudication for grand theft of a motor vehicle
 64 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

65 (b) The state may not file an information on a child
 66 otherwise eligible under this subsection if it is the child's
 67 first offense unless there are compelling reasons, which the
 68 state shall set out in writing ~~With respect to any child who was~~
 69 ~~16 or 17 years of age at the time the alleged offense was~~
 70 ~~committed, the state attorney may file an information when in~~
 71 ~~the state attorney's judgment and discretion the public interest~~
 72 ~~requires that adult sanctions be considered or imposed. However,~~
 73 ~~the state attorney may not file an information on a child~~
 74 ~~charged with a misdemeanor, unless the child has had at least~~
 75 ~~two previous adjudications or adjudications withheld for~~
 76 ~~delinquent acts, one of which involved an offense classified as~~
 77 ~~a felony under state law.~~

78 (4) DIRECT-FILE CRITERIA.-

79 (a) When a child is eligible to have an information filed
 80 by the state attorney under subsection (1), the state attorney
 81 shall use the following criteria to determine whether to file an
 82 information:

83 1. The seriousness of the alleged offense and whether
 84 transferring the child is necessary for protection of the
 85 community, including:

86 a. The recommendation of the department, through review
 87 and consideration of the recommendations of the department's
 88 caseworker.

89 b. The probable cause as found in the report, affidavit,
 90 or complaint, including:

91 (I) Whether the alleged offense was committed in an
 92 aggressive, violent, premeditated, or willful manner.

93 (II) Whether the alleged offense was against persons or
 94 against property, with greater weight being given to offenses
 95 against persons, especially if personal injury resulted.

96 c. The sophistication and maturity of the child.

97 2. The record and previous history of the child,
 98 including:

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

101 b. Prior periods of probation.

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

105 committed a delinquent act or violation of law involving
106 violence to persons.

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

110 e. Patterns of criminality or patterns of escalation.

111 3. The prospects for adequate protection of the public and
112 the likelihood of reasonable rehabilitation of the child, if the
113 child is found to have committed the alleged offense, by the use
114 of procedures, services, and facilities currently available to
115 the juvenile court.

116 4. Cost-effective alternatives available to divert the
117 child from the criminal and juvenile justice systems and offer
118 rehabilitative services for the child.

119 (b) If the state attorney files an information against a
120 child under this section, the state attorney shall file with the
121 court his or her written explanation, addressing the factors
122 listed in paragraph (a), as to why the child should be
123 transferred for criminal prosecution.

124 (5) REVERSE WAIVER.—Any child over whom the adult court
125 has obtained original jurisdiction may request, in writing, a
126 hearing to determine whether the child shall remain in adult
127 court. The adult court shall retain jurisdiction unless the
128 child proves by a preponderance of evidence all of the
129 following:

130 (a) The child could obtain services available in the

131 juvenile justice system which could lessen the possibility of
 132 the child reoffending in the future.

133 (b) The child's best interests would be served by
 134 prosecuting the case in juvenile court.

135 (c) The child could receive juvenile sanctions that would
 136 provide adequate safety and protection for the community.

137 (d) The child is not charged with a felony that is
 138 punishable by death or life imprisonment.

139 (e) The child has not previously been convicted and
 140 sentenced as an adult.

141 (6)(4) CHARGES INCLUDED.—An information filed pursuant to
 142 this section may include all charges that are based on the same
 143 act, criminal episode, or transaction as the primary offenses.
 144 Section 2. This act shall take effect July 1, 2014.