

CHAPTER 97-69

Committee Substitute for Senate Bill No. 1282

An act relating to imposition of adult sanctions upon children; amending s. 39.059, F.S., relating to community control or commitment of children prosecuted as adults; providing for the court to commit the child to the Department of Juvenile Justice for a treatment program until the child is age 21 or sooner if discharged by the department; removing a provision relating to court-ordered-plan of community control; providing for availability of presentence investigation report prior to the sentencing hearing and removing certain references to predisposition report and hearing; removing a requirement that a decision by the court to impose adult sanctions upon certain offenders must be in writing; providing for a presumption that the sentence imposing adult sanctions is appropriate; reenacting s. 39.052(3)(a), F.S., relating to transfer of a child for prosecution as an adult, to incorporate said amendment in references; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) and paragraphs (d), (f), (g), (h), and (i) of subsection (7) of section 39.059, Florida Statutes, are amended to read:

39.059 Community control or commitment of children prosecuted as adults.—

(4) The court shall have the power by order to:

(b) Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 ~~19~~ or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

(7)

(d) ~~Any sentence imposing decision to impose adult sanctions must be in writing, but~~ is presumed appropriate, and the court is not required to set forth specific findings or enumerate the criteria in this subsection as any basis for its decision to impose adult sanctions.

~~(f) After appropriate sanctions for the offense are determined, the court shall develop, approve, and order a plan of community control. The community control plan shall contain rules, requirements, conditions, and programs designed to encourage responsible and acceptable behavior and to promote the rehabilitation of the child and the protection of the community.~~

(f)(g) The court may receive and consider any other relevant and material evidence, including other reports, written or oral, in its effort to determine the action to be taken with regard to the child, and may rely upon such evidence to the extent of its probative value even if the evidence would not be competent in an adjudicatory hearing.

(g)(h) The court shall notify any victim of the offense of the hearing and shall notify, or subpoena if appropriate, the parents, guardians, or legal custodians of the child to attend the disposition hearing.

(h)(i) Upon completion of the presentence investigation ~~pre~~disposition report, it must be made available to the child's counsel and the state attorney by the department prior to the sentencing ~~disposition~~ hearing.

It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 39.069.

Section 2. For the purpose of incorporating the amendment to section 39.059 in references thereto, paragraph (a) of subsection (3) of section 39.052, Florida Statutes, 1996 Supplement, is reenacted to read:

39.052 Hearings.—

(3) TRANSFER OF A CHILD FOR PROSECUTION AS AN ADULT.—

(a)1. The court shall transfer and certify a child's criminal case for trial as an adult if the child is alleged to have committed a violation of law and, prior to the commencement of an adjudicatory hearing, the child, joined by a parent or, in the absence of a parent, by the guardian or guardian ad litem, demands in writing to be tried as an adult. Once a child has been transferred for criminal prosecution pursuant to a voluntary waiver hearing and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 39.059(4)(b) or (c).

2.a. The state attorney may file a motion requesting the court to transfer the child for criminal prosecution if the child was 14 years of age or older at the time the alleged delinquent act or violation of law was committed. If the child has been previously adjudicated delinquent for murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault, and is currently charged with a second or subsequent violent crime against a person, the state attorney shall file a motion requesting the court to transfer and certify the juvenile for prosecution as an adult, or proceed pursuant to subparagraph 5.

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 proceed pursuant to subparagraph 5. Upon the state attorney's request, the court shall either enter an order transferring the case and certifying the case for trial as if the child were an adult or provide written reasons for not issuing such an order.

3. If the court finds, after a waiver hearing under subsection (2), that a juvenile who was 14 years of age or older at the time the alleged violation of state law was committed should be charged and tried as an adult, the court shall enter an order transferring the case and certifying the case for trial as if the child were an adult. The child shall thereafter be subject to prosecution, trial, and sentencing as if the child were an adult but subject to the provisions of s. 39.059(7). Once a child has been transferred for criminal prosecution pursuant to an involuntary waiver hearing and has been found to have committed the presenting offense or a lesser included offense, the child shall thereafter be handled in every respect as an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 39.059(4)(b) or (c).

4.a. A child of any age who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the court as set forth in s. 39.049(7) unless and until an indictment on the charge is returned by the grand jury. When such indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as an adult:

(I) On the offense punishable by death or by life imprisonment; and

(II) On all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or by life imprisonment or on one or more acts or transactions connected with the offense punishable by death or by life imprisonment.

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

c. If the child is found to have committed the offense punishable by death or by life imprisonment, the child shall be sentenced as an adult. If the juvenile is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he or she was indicted as a part of the criminal episode, the court may sentence as follows:

(I) Pursuant to s. 39.059;

(II) Pursuant to chapter 958, notwithstanding any other provisions of that chapter to the contrary; or

(III) As an adult, pursuant to s. 39.059(7)(c).

d. Once a child has been indicted pursuant to this subsection and has been found to have committed any offense for which he or she was indicted as a part of the criminal episode, the child shall be handled thereafter in every respect as if an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 39.059.

5.a. Effective January 1, 1995, 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 sanctions be considered or imposed and when the offense charged is:

(I) Arson;

(II) Sexual battery;

(III) Robbery;

(IV) Kidnapping;

(V) Aggravated child abuse;

(VI) Aggravated assault;

(VII) Aggravated stalking;

(VIII) Murder;

(IX) Manslaughter;

(X) Unlawful throwing, placing, or discharging of a destructive device or bomb;

(XI) Armed burglary in violation of s. 810.02(2)(b) or specified burglary of a dwelling or structure in violation of s. 810.02(2)(c);

(XII) Aggravated battery;

(XIII) Lewd or lascivious assault or act in the presence of a child;

(XIV) Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; or

(XV) Grand theft in violation of s. 812.014(2)(a).

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:

(I) 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.

(II) Shall file an information if the child has been previously adjudicated delinquent for murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault, and is currently charged with a second or subsequent violent crime against a person.

c. Effective January 1, 1995, notwithstanding subparagraphs 1. and 2., regardless of the child's age at the time the alleged offense was committed, the state attorney must file an information with respect to any child who previously has been adjudicated for offenses which, if committed by an adult, would be felonies and such adjudications occurred at three or more separate delinquency adjudicatory hearings, and three of which resulted in residential commitments as defined in s. 39.01(59).

d. Once a child has been transferred for criminal prosecution pursuant to information and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as if an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 39.059(6).

e. Each state attorney shall develop and annually update written policies and guidelines to govern determinations for filing an information on a juvenile, to be submitted to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Juvenile Justice Advisory Board not later than January 1 of each year.

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

Section 3. This act shall take effect October 1, 1997, and shall apply to offenses committed on or after that date.

Became a law without the Governor's approval May 16, 1997.

Filed in Office Secretary of State May 12, 1997.