

Committee Substitute for
Committee Substitute for House Bill No. 69

An act relating to habitual juvenile offenders; providing a short title; amending s. 985.227, F.S.; revising language with respect to mandatory direct filing of information with respect to certain juvenile offenders; amending s. 985.233, F.S.; revising language with respect to alternatives for juveniles prosecuted as adults; reenacting s. 985.226, F.S., relating to criteria for waiver of juvenile court jurisdiction; hearing on motion to transfer for prosecution as an adult; to incorporate said amendments in reference thereto; providing an effective date.

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

Section 1. Short title.—This act may be cited as the “Habitual Juvenile Offender Accountability Act.”

Section 2. Subsection (2) of section 985.227, Florida Statutes, is amended to read:

985.227 Prosecution of juveniles as adults by the direct filing of an information in the criminal division of the circuit court; discretionary criteria; mandatory criteria.—

(2) MANDATORY DIRECT FILE.—

(a) With respect to any child who was 16 or 17 years of age at the time the alleged offense was committed, the state attorney shall file an information 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, or aggravated assault, and the child is currently charged with a second or subsequent violent crime against a person.

(b) With respect to any child 16 or 17 years of age at the time an offense classified as a forcible felony, as defined in s. 776.08, was committed, the state attorney shall file an information if the child has previously been adjudicated delinquent or had adjudication withheld for three acts classified as felonies each of which occurred at least 45 days apart from each other. This paragraph does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court. Notwithstanding subsection (1), 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. 985.03(47).

(c) 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. Subsection (4) of section 985.233, Florida Statutes, is amended to read:

985.233 Sentencing powers; procedures; alternatives for juveniles prosecuted as adults.—

(4) SENTENCING ALTERNATIVES.—

(a) Sentencing to adult sanctions.—

1. Cases prosecuted on indictment.—If the child is found to have committed the offense punishable by death or 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:

- a. As an adult ~~pursuant to this section~~;
- b. Pursuant to chapter 958; or
- c. As a juvenile pursuant to this section.

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

- a. As an adult ~~pursuant to this section~~;
- b. Pursuant to chapter 958; or
- c. As a juvenile pursuant to this section.

3. Notwithstanding any other provision to the contrary, if the state attorney is required to file a motion to transfer and certify the juvenile for prosecution as an adult pursuant to s. 985.226(2)(b) and that motion is

granted, or if the state attorney is required to file an information pursuant to s. 985.227(2)(a) or (b), the court must impose adult sanctions.

4.3- Any sentence imposing adult sanctions 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.

5.4- When a child has been transferred for criminal prosecution as an adult and has been found to have committed a violation of state law, the disposition of the case may include the enforcement of any restitution ordered in any juvenile proceeding.

(b) Sentencing to juvenile sanctions.—For juveniles transferred to adult court but who do not qualify for such transfer pursuant to s. 985.226(2)(b) or s. 985.227(2)(a) or (b), the court may impose juvenile sanctions under this paragraph. If juvenile sentences are imposed, the court shall, pursuant to this paragraph, in order to use this paragraph, the court shall stay adjudication of guilt and instead shall adjudge the child to have committed a delinquent act. Adjudication of delinquency shall not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction. The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments. An adult sanction or a juvenile sanction may include enforcement of an order of restitution or community control previously ordered in any juvenile proceeding. However, if the court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department shall return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions. Upon adjudicating a child delinquent under subsection (1), the court may:

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

2. 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 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.

3. Order disposition pursuant to s. 985.231 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

(c) Imposition of adult sanctions upon failure of juvenile sanctions.—If a child proves not to be suitable to a community control program or for a treatment program under the provisions of subparagraph (b)2., the court may revoke the previous adjudication, impose an adjudication of guilt, classify the child as a youthful offender when appropriate, and impose any sentence which it may lawfully impose, giving credit for all time spent by the child in the department.

(d) Recoupment of cost of care in juvenile justice facilities.—When the court orders commitment of a child to the Department of Juvenile Justice for treatment in any of the department's programs for children, the court shall order the natural or adoptive parents of such child, the natural father of such child born out of wedlock who has acknowledged his paternity in writing before the court, or guardian of such child's estate, if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child, to pay fees to the department equal to the actual cost of the care, support, and maintenance of the child, unless the court determines that the parent or legal guardian of the child is indigent. The court may reduce the fees or waive the fees upon a showing by the parent or guardian of an inability to pay the full cost of the care, support, and maintenance of the child. In addition, the court may waive the fees if it finds that the child's parent or guardian was the victim of the child's delinquent act or violation of law or if the court finds that the parent or guardian has made a diligent and good faith effort to prevent the child from engaging in the delinquent act or violation of law. When the order affects the guardianship estate, a certified copy of the order shall be delivered to the judge having jurisdiction of the guardianship estate.

(e) Further proceedings heard in adult court.—When a child is sentenced to juvenile sanctions, further proceedings involving those sanctions shall continue to be heard in the adult court.

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. 985.234.

Section 4. For the purpose of incorporating the amendment to section 985.233, Florida Statutes, in references thereto, the following sections or subdivisions of Florida Statutes, are reenacted to read:

985.226 Criteria for waiver of juvenile court jurisdiction; hearing on motion to transfer for prosecution as an adult.—

(2) INVOLUNTARY WAIVER.—

(b) Mandatory waiver.—

1. 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

2. 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 s. 985.227(1). 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.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor April 18, 2000.

Filed in Office Secretary of State April 18, 2000.