

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 783 Charging Youths as Adults in Criminal Proceedings

SPONSOR(S): Criminal Justice Subcommittee; Edwards; Pilon and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1082

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In Florida, there are several methods for transferring a juvenile to adult court for prosecution – judicial waiver, indictment, and direct file. The bill substantially amends Florida’s indictment and direct file transfer processes.

The bill amends the indictment transfer process by:

- Limiting the State’s authority to convene a grand jury to cases in which the juvenile is 13 or older and is charged with murder, manslaughter, or sexual battery (the State currently has this authority for juveniles of any age who are charged with an offense punishable by death or life imprisonment).

The bill amends the direct file transfer process by eliminating the mandatory direct file system and modifying the discretionary direct file system to a two-tiered system based on the juvenile’s age at the time of offense.

- In the first tier, the State may direct file a juvenile who was 16 or older and less than 18, at the time of the alleged offense and committed an enumerated offense.
- In the second tier, the State may direct file a juvenile who was 14 or older and less than 16, at the time of the offense and committed murder, manslaughter, or sexual battery.

The bill prohibits a juvenile from being transferred to adult court by indictment or direct file if the juvenile:

- Has a pending competency hearing in juvenile court; or
- Has been previously found to be incompetent and has not subsequently been found by a court to have attained competency.

Unlike current law, the bill never requires the court to impose adult sanctions. Instead, the bill provides that a juvenile transferred to adult court and who is found to have committed a violation of law may be sentenced as an adult, as a youthful offender, or as a juvenile. The bill removes, modifies, and adds criteria that the court must consider when determining whether adult, youthful offender, or juvenile sanctions are appropriate. The bill requires the court’s order to include specific findings of fact and the reasons for its decisions to impose adult, youthful offender, or juvenile sanctions.

The bill also requires DJJ to collect and annually report direct file data to the Legislature.

The bill will likely have a negative prison bed impact on the Department of Corrections, and a positive residential bed impact on the Department of Juvenile Justice (DJJ). Additionally, DJJ will likely experience a negative fiscal impact as a result of complying with the data collection provisions of the bill. See fiscal section.

The bill is effective July 1, 2015.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/20/2015

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Transferring Juveniles to Adult Court

In Florida, there are several methods for transferring a juvenile to adult court for prosecution. A detailed description of each method follows.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. Section 985.556, F.S., creates three types of judicial waivers:

- Voluntary Waiver - the juvenile requests to have their case transferred to adult court;¹
- Involuntary Discretionary Waiver - the State may file a motion requesting the court to transfer any case where the juvenile is 14 years of age or older;² and
- Involuntary Mandatory Waiver - the State must request the transfer of a juvenile 14 years of age or older if the child:
 - Has been previously adjudicated delinquent for a specified felony and the child is currently charged with a second or subsequent violent crime against a person; or
 - Was 14 years of age or older at the time of commission of a fourth or subsequent felony offense and the child was previously adjudicated delinquent or had adjudication withheld for three felony offenses, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person.³

If the state attorney files a motion to transfer a juvenile to adult court, the court must hold a hearing to determine whether the child should be transferred.⁴ The court must consider a variety of statutorily articulated factors when determining whether transfer is appropriate (e.g., the seriousness of the offense, the sophistication and maturity of the child, the record and previous history of the child, whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner, etc.).⁵ The court must also provide an order specifying the reasons for its decision to impose adult sanctions.⁶

If a juvenile transferred to adult court pursuant to a voluntary or involuntary discretionary waiver is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.⁷ If the transfer was pursuant to an involuntary mandatory waiver, the court must impose adult sanctions.⁸

Indictment

Section 985.56, F.S., specifies that a child of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment is returned on the charge by a grand jury. If the grand jury returns an indictment on the charge, the child must be transferred to adult court and be handled as an adult in every respect.⁹

If the juvenile is found to have committed the offense, the court must sentence the juvenile as an adult.¹⁰ If the juvenile is found not 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 part of the

¹ s. 985.556(1), F.S.

² s. 985.556(2), F.S.

³ s. 985.556(3), F.S.

⁴ s. 985.556(4), F.S.

⁵ s. 985.556(4)(c), F.S.

⁶ s. 985.556(4)(e), F.S.

⁷ s. 985.565(4)(a)2., F.S.

⁸ s. 985.565(4)(a)3., F.S.

⁹ s. 985.56(1), F.S. The charge punishable by death or life imprisonment must be transferred, as well as 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 life imprisonment.

¹⁰ s. 985.565(4)(a)1., F.S.

criminal episode, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.¹¹

Direct File

While judicial waiver and indictment are both available transfer tools, they are rarely used since s. 985.557, F.S., the statute that codifies the “direct file” system, provides the State with the power to transfer cases without a judge or grand jury weighing in on the appropriateness of the transfer. Direct file accounts for 98% of the juvenile cases transferred to adult court. “Discretionary direct file” is generally considered the most controversial of the three transfer processes.

Discretionary Direct File

Section 985.557(1), F.S., establishes Florida’s discretionary direct file method. This subsection *permits* the State to file an information¹² on certain juveniles’ cases in adult court, without a waiver hearing, when, in the State’s judgment, the offense requires that adult sanctions be imposed. Specifically, the State may file an information in adult court when a juvenile who is:

- 14 or 15 years old is charged with one of the following felony offenses:
 - Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; specified burglary of a dwelling or structure; burglary with an assault or battery; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft; possessing or discharging any weapon or firearm on school property; home invasion robbery; carjacking; grand theft of a motor vehicle; or grand theft of a motor vehicle valued at \$20,000 or more if the child has a previous adjudication for grand theft of a motor vehicle.¹³
- 16 or 17 years old is charged with any felony offense;¹⁴ and
- 16 or 17 years old is charged with any misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which is a felony.¹⁵

Florida’s statutes do not currently articulate any standards that the State must use when determining whether to file a juvenile’s case in adult court under discretionary direct file provisions.

If a juvenile transferred to adult court pursuant to the discretionary direct file process is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.¹⁶

Mandatory Direct File

Section 985.557(2), F.S., establishes Florida’s mandatory direct file system. The subsection *requires* the State to file a juvenile’s case in adult court when a juvenile who is:

- 16 or 17 years old at the time of the alleged offense:
 - Has been previously adjudicated delinquent for an enumerated felony¹⁷ and the juvenile is currently charged with a second or subsequent violent crime against a person;
 - Is currently charged with a forcible felony¹⁸ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other;¹⁹ or

¹¹ *Id.*

¹² An “information” is the charging document that initiates prosecution. Any information filed pursuant to the direct file statute may include all charges that are based on the same act, criminal episode, or transaction as the primary offenses. s. 985.557(3), F.S.

¹³ s. 985.557(1)(a), F.S.

¹⁴ s. 985.557(1)(b), F.S.

¹⁵ *Id.*

¹⁶ s. 985.565(4)(a)2. and (b), F.S.

¹⁷ The enumerated felonies listed in this subsection include 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.

¹⁸ Section 776.08, F.S., defines “forcible felony” to mean treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful

- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-q., F.S.,²⁰ and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device;²¹ or
- Any age is alleged to have committed an act that involves stealing a vehicle where the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.²²

The court may sentence the following juveniles who are transferred to adult court pursuant to the mandatory direct file process as an adult, as a youthful offender, or as a juvenile:

- Juveniles found to have committed the offense or a lesser included offense who:
 - Are 16 or 17 years old at the time of the offense, the offense was listed in s. 775.087(2)(a)1.a.-q., F.S., and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device; and
 - Are of any age and the offense involved stealing a vehicle where the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.²³

The court must impose adult sanctions on the following juveniles who are transferred to adult court pursuant to the mandatory direct file process and who are found to have committed the offense or a lesser included offense:

- Juveniles 16 or 17 years old at the time of the offense who:
 - Have been previously adjudicated delinquent for an enumerated felony and the juvenile has been found to have committed a second or subsequent violent crime against a person; or
 - Have been found to have committed a forcible felony and have been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other.²⁴

Determining Whether to Impose Adult or Juvenile Sanctions

As noted above, judges often have discretion to impose adult or juvenile sanctions when a juvenile is transferred to adult court and is found to have committed the offense. In such instances, the judge must consider specified factors to determine whether adult or juvenile sanctions are appropriate.

These include:

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;²⁵
- The sophistication and maturity of the offender;
- The record and previous history of the offender, including:

throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

¹⁹ Section 985.557(2)(b), F.S., also states that 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.

²⁰ This list includes: murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.

²¹ The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

²² s. 985.557(2)(c), F.S.

²³ s. 985.565(4)(a)2., F.S.

²⁴ s. 985.565(4)(a)3., F.S.

²⁵ Greater weight is given to offenses against persons, especially if personal injury resulted.

- Previous contacts with the Department of Corrections (DOC), DJJ, the former Department of Health and Rehabilitative Services (HRS), the Department of Children and Families (DCF), law enforcement agencies, and the courts;
- Prior periods of probation;
- Prior adjudications that the offender committed a delinquent act or violation of law as a child;
- Prior commitments to DJJ, former HRS, DCF, or other facilities or institutions;
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to DJJ services and facilities;
- Whether DJJ has appropriate programs, facilities, and services immediately available; and
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than juvenile sanctions.²⁶

The court is required to consider a presentence investigation (PSI) report prepared by DOC regarding the suitability of a juvenile for disposition as an adult or juvenile.²⁷ The PSI report must include a comments section prepared by DJJ, with its recommendations as to disposition.²⁸ The court must give all parties²⁹ present at the disposition hearing an opportunity to comment on the issue of sentence and any proposed rehabilitative plan, and may receive and consider any other relevant and material evidence.³⁰

If juvenile sentences are imposed, the court must adjudge the child to have committed a delinquent act.³¹ Upon adjudicating a child delinquent, the court may:

- Place the juvenile in a probation program under the supervision of DJJ for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the juvenile to DJJ for treatment in an appropriate program for an indeterminate period of time until the child is 21 or sooner if discharged by DJJ;³² or
- Order disposition under ss. 985.435, 985.437, 985.439, 985.441, 985.45, and 985.455, F.S., as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.³³

It should be noted that if the court imposes a juvenile sanction and DJJ determines that the sanction is unsuitable for the juvenile, DJJ must return custody of the juvenile to the sentencing court for further proceedings, including the imposition of adult sanctions.³⁴

Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions.³⁵

The court may not sentence the child to a combination of adult and juvenile punishments.³⁶

²⁶ s. 985.565(1)(b), F.S.

²⁷ s. 985.565(3), F.S. This report requirement may be waived by the offender.

²⁸ *Id.*

²⁹ This includes the parent, guardian, or legal custodian of the offender; the offender's counsel; the State; representatives of DOC and DJJ; the victim or victim's representative; representatives of the school system; and LEOs involved in the case.

³⁰ *Id.* Other relevant evidence may include other reports, written or oral, in its effort to determine the action to be taken with regard to the child. This evidence may be relied upon by the court to the extent of its probative value even if the evidence would not be competent in an adjudicatory hearing.

³¹ s. 985.565(4)(b), F.S. Adjudication of delinquency is not deemed a conviction, nor does it operate to impose any of the civil disabilities ordinarily resulting from a conviction.

³² DJJ must notify the court of its intent to discharge the juvenile from the commitment program 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.

³³ s. 985.565(4)(b), F.S.

³⁴ *Id.* DJJ also has recourse if the judge imposes a juvenile sanction and the child proves not to be suitable to the sanction. In such instances, DJJ must provide the sentencing court a written report outlining the basis for its objections to the juvenile sanction and schedule a hearing. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any adult sanction it may have originally lawfully imposed. s. 985.565(4)(c), F.S.

³⁵ s. 985.565(4)(a)4., F.S.

³⁶ *Id.*

Effect of Transferring a Juvenile to Adult Court

If a juvenile who has been transferred to adult court for prosecution is found to have committed the offense or a lesser included offense, the juvenile must have any subsequent violations of law handled thereafter in every respect as an adult.³⁷ The court must also immediately transfer and certify all unresolved³⁸ felony cases pertaining to the juvenile to adult court for prosecution.³⁹

If the juvenile is acquitted of all charged offenses (or lesser included offenses) contained in the original direct filed case, all felony cases transferred to adult court as a result of the direct file case must be subject to juvenile sanctions.⁴⁰

Juvenile Transfer Statistics from the Department of Juvenile Justice (DJJ)

Since FY 2008-09, there has been a significant reduction (53%) in juveniles transferred to adult court, as well as a significant reduction in the overall incidence of juvenile crime. In FY 12-13, there were a total of 1,535 juvenile transfers, most of which related to a felony offense (96%).⁴¹ The majority of the juveniles transferred to adult court are 16 or 17 years old.⁴² During FYs 08-09 through 12-13, there were only two juveniles transferred who were 11-12 years of age and none who were ages 5-10.⁴³

By looking at each circuit's total number of youth received by DJJ and total number of youth transferred to the adult system, it appears that a discrepancy exists amongst the various circuits in the rate at which they transfer juveniles to adult court.⁴⁴ The rate that juveniles are transferred to adult court for FYs 08-09 through 12-13 vary from 1.6% to up to 8.86% of the total youth received by DJJ.⁴⁵ The mean rate statewide is 3.57%.⁴⁶

In FY 12-13, the most common offenses which resulted in juveniles being transferred to adult court included:

- Burglary (481 youth);
- Armed robbery (260 youth);
- Aggravated assault or battery (185 youth);
- Weapon-related felonies (98 youth);
- Drug-related felonies (75 youth);
- Robbery (73 youth);
- Sexual battery (59 youth); and
- Grand theft auto (44 youth).⁴⁷

Florida is known for having some of the best collection and reporting practices for data relating to juveniles transferred to adult court.⁴⁸ Many states do not collect this data at all, which makes it difficult to compare Florida's transfer statistics to other states.⁴⁹ There are only 13 states that publicly report all transfers. However, even within those 13 states, huge discrepancies exist among the quality of data

³⁷ ss. 985.556(5), 985.56(4), and 985.557(3), F.S. This provision does not apply if the adult court imposes juvenile sanctions under s. 985.565, F.S.

³⁸ Unresolved cases include those which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not been made. *See* s. 985.557(3), F.S.

³⁹ ss. 985.556(5), 985.56(4), and 985.557(3), F.S.

⁴⁰ *Id.*

⁴¹ Department of Juvenile Justice (DJJ) Delinquency Profile 2012-2013 (hereinafter referenced as "Delinquency Profile").

⁴² 385 out of the 1,585 total youth transferred to criminal court in FY 12-13 were 16 years old at the time they committed the offense (25%), while 1,016 out were 17 years old or older when they committed the offense (66%). *Age at Arrest - Youth Transferred Statewide*, Delinquency Profile, *also see*, e-mail from Jon Menendez, DJJ, September 18, 2014 (on file with the Criminal Justice Subcommittee).

⁴³ *Id.*

⁴⁴ *Circuit Summary Data – Total Offenses – Youth Transferred*, Delinquency Profile.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Felonies – Youth Transferred Statewide*, Delinquency Profile and s. 812.14(1)(c)6., F.S.

⁴⁸ *Trying Juveniles as Adults*, at 16.

⁴⁹ *Trying Juveniles as Adults*, at 14.

that is reported.⁵⁰ Of the states that do report transfers, many only report the number of juveniles that are transferred as a result of a judicial waiver hearing, but do not report those that are filed directly in adult court.⁵¹ Other factors also affect the quality of comparable data. For example discrepancies in the definition of an “adult” may lead to data that is not appropriate for comparison. As a result, it is extremely difficult to determine whether Florida transfers more juveniles to adult court than other states.

Effect of the Bill

The bill substantially amends Florida’s indictment and direct file transfer processes.

Indictment

As noted above, s. 985.56, F.S., permits the State to bring a juvenile of any age who is charged with an offense that is punishable by death or life imprisonment before a grand jury for an indictment. If the juvenile is found to have committed the offense, the court must sentence the juvenile as an adult. If the juvenile is found not 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 part of the criminal episode, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.

The bill amends s. 985.56, F.S., to:

- Limit the State’s authority by specifying that the State may only convene a grand jury for a juvenile who is 13 years of age or older and less than 18 years of age:
 - Where the juvenile is charged with murder, manslaughter, or sexual battery; and
 - When in the State’s judgment and discretion, the public interest requires that adult sanctions be considered;
- Allow the court to sentence the juvenile as an adult, a youthful offender, or as a juvenile, even when the juvenile is found to have committed the indictable offense; and
- Prohibit a juvenile who is eligible for indictment but who is pending a competency hearing in juvenile court or has been previously found to be incompetent and has not subsequently been found by a court to have attained competency from being transferred to adult court for criminal prosecution.

Currently, the court is required to immediately transfer any unresolved felony cases pertaining to the juvenile to adult court upon the grand jury returning an indictment. The bill permits, rather than requires, the court to transfer such unresolved felony cases.

Direct File

The bill substantially rewords s. 985.557, F.S., eliminating the mandatory direct file system and modifying the discretionary direct file system to a two-tiered system based on the juvenile’s age at the time of offense.

Tier One

The bill permits the State to file an information in adult court when, in their judgment and discretion, the public interest requires that adult sanctions be considered and:

- The juvenile was 16 years of age or older and less than 18 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:
 - Murder;
 - Manslaughter;
 - Sexual battery;
 - Armed robbery;
 - Aggravated assault with a firearm;
 - Aggravated child abuse;
 - Aggravated stalking;
 - Kidnapping;
 - Unlawful throwing, placing, or discharging of a destructive device and bomb;

⁵⁰ *Id.*

⁵¹ *Id.*

- Aggravated battery resulting in great bodily harm, permanent disability, or permanent disfigurement;
- Carrying, displaying, using, or threatening or attempting to use a weapon or firearm in furtherance of the commission of a felony, provided the use or threatened use does not include the mere acquisition of a deadly weapon or firearm during the felony;
- Possessing or discharging a firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Carjacking;
- Aggravated animal cruelty;
- DUI resulting in fatality, great bodily harm, permanent disability, or permanent disfigurement to a person other than the accused;
- Criminal use of personal identification information in violation of s. 817.568(2)(b) or (c), F.S.; or
- Arson in violation of s. 806.031(2), F.S.

Tier Two

The bill permits the State to file an information in adult court when, in their judgment and discretion, the public interest requires adult sanctions be considered and:

- The juvenile was 14 years of age or older and less than 16 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:
 - Murder;
 - Manslaughter; or
 - Sexual battery.

A juvenile eligible for direct file cannot be transferred if he or she has:

- A pending competency hearing in juvenile court; or
- Been previously found to be incompetent to proceed and has not subsequently been found by a court to have attained competency.

The bill clarifies that nothing in s. 985.557, F.S., precludes the State from seeking to transfer a juvenile for prosecution in adult court pursuant to the judicial waiver process.

As noted above, current law requires the court to transfer any unresolved felony cases pertaining to the juvenile to adult court when a juvenile is direct filed. The bill amends this provision to permit the court to transfer such unresolved felony cases. As in current law, the bill requires a juvenile to receive juvenile sanctions if the juvenile is acquitted in adult court on the case that resulted in the direct file.

The bill also requires DJJ to collect and annually report data to the President of the Senate and Speaker of the House of Representatives regarding juveniles who qualify for direct file. This data includes, but is not limited to:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence;
- Circuit and county of offense;
- Prior adjudicated offenses;
- Prior periods of probation;
- Previous contacts with law enforcement agencies or the courts;
- Initial charges;
- Charges at disposition;
- Whether adult codefendants were involved;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel;
- Whether the child had waived counsel;
- Risk assessment instrument score;

- The child's medical, mental health, substance abuse, or trauma history;
- The child's history of physical or mental impairment or disability-related accommodations;
- The child's history of abuse or neglect;
- The child's history of foster care placements, including the number of prior placements;
- Whether the child has experienced a failed adoption;
- Whether the child has fetal alcohol syndrome or was exposed to controlled substances at birth;
- Whether the child has below-average intellectual functioning or is eligible for exceptional student education services;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a CINS/FINS or dependency petition;
- Plea offers made by the state and the outcome of any plea offers;
- Whether the child was transferred for criminal prosecution as an adult;
- The case resolution in juvenile court;
- The case resolution in adult court; and
- Disposition data, including, but not limited to, whether the child received adult sanctions, juvenile sanctions, or diversion, and, if sentenced to prison, length of prison sentence or enhanced sentence.

No Requirement to Impose Adult Sanctions

Unlike current law, the bill never requires the court to impose adult sanctions. Instead, the bill provides that a juvenile transferred pursuant to information, indictment, or waiver of juvenile court jurisdiction and who is found to have committed a violation of law or a lesser included offense may be sentenced as:

- An adult;
- A youthful offender under ch. 958, F.S.; or
- A juvenile.

Determining Whether to Impose Adult or Juvenile Sanctions

The bill amends portions of s. 985.565, F.S., modifying existing criteria and adding additional criteria the court must consider when determining whether juvenile sanctions or adult sanctions are appropriate. The bill includes the following additional criteria for courts to consider:

- The extent of the child's participation or role in the offense;
- The effect, if any, of familial or peer pressure on the child's actions; and
- Whether DOC has appropriate programs, facilities, and services immediately available for the juvenile.

The bill modifies the following existing criteria for courts to consider:

- The sophistication and maturity of the child, including:
 - The child's age, intellectual capacity, and mental and emotional health at the time of the offense;
 - The child's background, including his or her family, home, and community environment;
 - The effect, if any, of immaturity, impetuosity, or failure to appreciate the risks and consequences on the child's participation in the offense; and
 - The effect, if any, of characteristics attributable to the child's age on the child's judgment
- The record and previous history of the juvenile, including:
 - Previous contacts with DOC, DJJ, HRS, and DCF and the adequacy and appropriateness of the any services provided to address the juvenile's needs;
 - Previous contacts with law enforcement agencies and the courts;
 - History of abuse, abandonment, or neglect; and
 - Identification of the child as having a mental, physical, or intellectual or developmental disability or having previously received mental health services or treatment.

The bill removes the provision allowing the court to consider whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

As noted above, the court is not currently required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions. The bill requires the court to render an order including specific findings of fact and the reasons for its decisions to impose adult, youthful offender, or juvenile sanctions. The order is reviewable on appeal under s. 985.534, F.S., and the Florida Rules of Appellate Procedure.

As noted above, the court may currently consider any other relevant evidence when determining whether juvenile or adult sanctions are most appropriate, but the statute is silent as to specified types of additional evidence that can be considered. The bill amends this provision to require the court to consider any reports that may assist the court in its decision. These include, but are not limited to:

- Prior predisposition reports, psychosocial assessments, individual education plans, developmental assessments, school records, abuse or neglect reports, home studies, protective investigations, and psychological or psychiatric evaluations.

The juvenile, the State, and defense counsel have the right to examine these reports, and to question the parties responsible for them at the hearing.

The bill also requires the court to adjudge the juvenile to have committed a delinquent act any time juvenile sanctions are imposed (currently, the court only has to do so in limited instances).

Lastly, the bill removes the:

- Prohibition on imposing both adult and juvenile sanctions; and
- Requirement that DJJ return the juvenile to sentencing court for further proceedings if DJJ determines the sanction is inappropriate.

The bill also amends ss. 985.04 and 985.556, F.S., conforming statutory cross-references to changes made in the act.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.557, F.S., relating to direct filing of an information; discretionary and mandatory criteria.

Section 2. Amends s. 985.56, F.S., relating to indictment of a juvenile.

Section 3. Amends s. 985.565, F.S., relating to sentencing powers; procedures; alternatives for juveniles prosecuted as adults.

Section 4. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 5. Amends s. 985.556, F.S., relating to waiver of juvenile court jurisdiction; hearing.

Section 6. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

On March 11, 2015, the Criminal Justice Impact Conference determined that this bill will have a negative indeterminate prison bed impact on the Department of Corrections (i.e., an unquantifiable negative bed impact). Additionally, to the extent that this bill results in more juveniles being prosecuted in the juvenile justice system (rather than the adult system) and ultimately sentenced to

a residential commitment program within DJJ, there will be a positive residential bed impact on DJJ (i.e., a need for more residential beds).

Additionally, the bill would require DJJ to collect additional data for review and analysis. DJJ reports that this would require modification of the Juvenile Justice Information System (JJIS) in order to capture all of the required data elements for the annual report to the Legislature.⁵² DJJ estimates that this will cost \$93,600 dollars and could take up to 6 months to complete and implement.⁵³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 985.64, F.S., requires DJJ to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of ch. 985, F.S. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- 1) Lines 367-371: The bill removes language permitting DJJ to transfer the juvenile back for resentencing if DJJ determines that there is no appropriate placement for that juvenile. The bill does not provide another method for such situation and this issue may need to be addressed in the bill to provide DJJ guidance.

⁵² Department of Juvenile Justice, Agency Bill Analysis for 2015 House Bill 783, p. 6-7 (March 10, 2015)(on file with the Criminal Justice Subcommittee).

⁵³ *Id.*

- 2) The effective date of this bill is currently July 1, 2015. DJJ reports that a later effective date may be necessary to accommodate reconfiguration of the JJIS system and procurement of additional beds in our residential facilities.⁵⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2015, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Permit children who are 16 or 17 years old to be transferred by direct file to adult court at the state's discretion for any of the offenses enumerated in the bill (rather than only 17 year olds);
- Include specified offenses of arson and criminal use of personal identification information to the enumerated list of felonies that permit a 16 or 17 year old child to be transferred to adult court by direct file;
- Provide that a child aged 14 and older and less than 18 can be transferred by direct file for any offense of sexual battery, rather than only aggravated sexual battery;
- Permit a child to be transferred via direct file for a DUI offense which resulted in the death of any person other than the accused (instead of the accused and any person who voluntarily rode in the accused's vehicle);
- Permit a child 13 or older (rather than 14 or older) charged with specified offenses to be transferred to adult court through the indictment process; and
- Ensure that the court has guidance on how to sentence a child that has been transferred to adult court via the indictment process.

The bill analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

⁵⁴ *Id.* at p. 6.