

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 876

INTRODUCER: Criminal Justice Committee and Senator Powell

SUBJECT: Direct Filing of an Information

DATE: April 9, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	<b>Fav/CS</b>
2.			ACJ	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 876 requires the court to hold an evidentiary hearing to determine whether a child transferred to adult court pursuant to discretionary direct file should remain in adult court or be transferred back to juvenile court.

The bill provides that the purpose of the hearing is to determine whether it is necessary for the community's protection that the child is prosecuted in adult court. The bill requires the judge to conduct the hearing within 30 days of the filing of the information and consider a number of factors in making its determination regarding which court should have jurisdiction over the case.

The bill also provides that a child who has been transferred for prosecution as an adult pursuant to discretionary direct file cannot be held in a jail or other facility intended or used for the detention of adults prior to an evidentiary hearing required by the bill and a subsequent finding that the child should be prosecuted as an adult.

The bill also repeals all provisions relating to mandatory direct file, the process in which a state attorney is required to file an information charging a child in adult court.

The fiscal impact of the bill is indeterminate at this time. However, the bill requires the judge to consider a number of factors at the hearing, including evaluations and assessments completed by the Department of Juvenile Justice (DJJ). As a result, the DJJ may incur costs associated with

such documents. Additionally, the bill eliminates mandatory direct file, which may result in more children being held in the custody of the DJJ. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

## II. Present Situation:

### Transfer of a Child to Adult Court

There are three methods of transferring a child to adult court for prosecution: judicial waiver,<sup>1</sup> indictment,<sup>2</sup> or direct filing an information.

#### *Direct File*

Direct file describes the process whereby a state attorney files an information charging a child in adult court. Pursuant to s. 985.557, F.S., direct file can be either discretionary or mandatory and is accomplished exclusively by the state attorney without requiring the court's approval. Direct file is the predominant transfer method to adult court, accounting for 96.2 percent (870 children) of the transfers in FY 2017-18.<sup>3</sup>

#### Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may direct file a child when he or she is:

- 14 or 15 years of age and is charged with the commission of, attempt to commit, or conspiracy to commit, 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 in violation of s. 810.02(2)(b), F.S.;
  - Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
  - Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
  - Aggravated battery;

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<sup>1</sup> Judicial waiver is the process in which a child or a state attorney may, or in some cases must, waive the jurisdiction of the juvenile courts and have the case transferred to adult court for prosecution. The three types of judicial waiver are voluntary, involuntary discretionary, and involuntary mandatory. *See* s. 985.556, F.S.

<sup>2</sup> A grand jury can indict a child of any age who is charged with an offense punishable by death or life imprisonment. Upon indictment, the child's case must be transferred to adult court for prosecution. *See* s. 985.56, F.S.

<sup>3</sup> SB 1260 (2019) addresses mandatory direct file and therefore, is similar to SB 876. *See* Department of Juvenile Justice, *2019 Legislative Bill Analysis for SB 1260*, (March 13, 2019) (on file with the Senate Criminal Justice Committee).

- Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
- Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
- Grand theft in violation of s. 812.014(2)(a), F.S.;
- Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Carjacking;
- Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
- Grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.<sup>4</sup>
- 16 or 17 years of age and is charged with any felony offense;<sup>5</sup> or
- 16 or 17 years of age and is charged with a misdemeanor, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.<sup>6</sup>

If a child who has been transferred to adult court pursuant to discretionary direct file is found to have committed a violation of state law or a lesser included offense for which he or she was charged as part of the criminal episode, the court may sentence the child as an adult, pursuant to ch. 958, F.S., or as a juvenile.<sup>7</sup>

#### Mandatory Direct File

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the child is:

- 16 or 17 years of age at the time of the alleged offense and:
  - Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;<sup>8</sup>
  - Is charged with a forcible felony<sup>9</sup> and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;<sup>10</sup> or

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<sup>4</sup> Section 985.557(1)(a)1.-19., F.S.

<sup>5</sup> Section 985.557(1)(b), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 985.565(4)(a)2., F.S.

<sup>8</sup> The enumerated felonies include: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault. *See* s. 985.557(2)(a), F.S.

<sup>9</sup> Section 776.08, F.S., defines “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the threat of physical force or violence against any individual.

<sup>10</sup> Section 985.557(2)(b), F.S., provides that this provision does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the child in adult court.

- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)1.a.-p., F.S.,<sup>11</sup> and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;<sup>12</sup> or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.

If the state attorney is required to direct file a child, the court must impose adult sanctions. Any sentence imposing adult sanctions is presumed appropriate and the court is not required to specify findings or criteria as the basis for its decision to impose such sanctions.<sup>13</sup>

Following the transfer of a child to adult court pursuant to direct file, the court must order the child to be delivered to a jail or other facility intended or used for the detention of adults.<sup>14</sup>

### III. Effect of Proposed Changes:

Current law does not permit the court to review a decision made by a state attorney to direct file a child. The bill requires the court to hold an evidentiary hearing to determine whether a child transferred to adult court pursuant to discretionary direct file should remain in adult court or be transferred back to juvenile court.

The purpose of the hearing is to determine whether it is necessary for the community's protection that the child is prosecuted in adult court. The bill requires the judge to conduct the hearing within 30 days of the filing of the information, excluding weekends and legal holidays, unless good cause is shown for a delay. The judge must consider all of the following:

- Evaluations and assessments completed by the DJJ;
- The sophistication and maturity of the child, including:
  - The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the child's participation in the alleged offense;
  - The child's age, maturity, intellectual capacity, and mental and emotional health at the time of the alleged offense; and
  - The effect, if any, of characteristics attributable to the child's youth on the child's judgment.

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<sup>11</sup> The offenses include murder; sexual battery; robbery; burglary; arson; 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-Butaneidol; trafficking in Phenethylamines; or any other violation of s. 893.135(1), F.S. Section 775.087(2)(a)1.a.-p., F.S.

<sup>12</sup> The terms "firearm" and "destructive device" are defined in s. 790.001, F.S.

<sup>13</sup> Section 985.565(4)(a)3. and 4., F.S.

<sup>14</sup> However, the court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for criminal prosecution pursuant to direct file to be detained or held in a jail or other facility intended or used for the detention of adults. *See* s. 985.265(5), F.S.

- The record and history of the child, including:
  - Prior contacts with the DJJ, the Department of Corrections (DOC), the Department of Children and Families, other law enforcement agencies, or the courts;
  - Prior periods of probation;
  - Prior adjudications that the child committed a delinquent act or violation of law, with greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving violence to persons;
  - Prior commitments to institutions of the DJJ, the DOC, or agencies under contract with either department;
  - History of trauma, abuse or neglect, foster care placements, failed adoption, fetal alcohol syndrome, exposure to controlled substances at birth, or below-average intellectual functioning; and
  - Identification of the child as a student requiring exceptional student education or having previously received psychological services.
- The nature of the alleged offense and the child's participation, including:
  - Whether the alleged offense is punishable by death or life imprisonment;
  - Whether the alleged offense was against persons or property;
  - Whether the alleged offense is alleged to have been committed in an aggressive, violent, or premeditated manner;
  - The extent of the child's alleged participation in the alleged offense; and
  - The effect, if any, of familial pressure or peer pressure on the child's actions.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense:
  - By the use of procedures, services, and facilities currently available to the juvenile court; and
  - By the use or procedures, services, and facilities currently available to the adult court, including whether the lowest permissible sentence under the Criminal Punishment Code is a nonstate prison sanction.
- Whether the child could obtain habilitative or rehabilitative services available in the juvenile justice system;
- Whether the child could receive a sentence in juvenile court that would provide adequate safety and protection for the community; and
- Whether the child's best interests would be served by prosecuting the child in juvenile court.

The bill permits the judge to consider any reports, including prior pre-disposition reports, psycho-social assessments, individualized educational programs, developmental assessments, school records, abuse or neglect reports, home studies, protective investigations, or psychological or psychiatric evaluations, to assist him or her in reaching a decision of whether to keep the child in adult court. The bill provides the child, the child's parents or legal guardians, the child's defense counsel, and the state attorney with the right to examine such records and question the parties responsible for creating them at the hearing.

Unless the court finds by a preponderance of the evidence that consideration of the factors listed above support returning the child to juvenile court, the adult court will retain jurisdiction. The adult court must render an order including specific findings of fact and reasons for its decision. The prosecution and defense may seek immediate review of the order through interlocutory

appeal and the order is reviewable on appeal pursuant to the Florida Rules of Appellate Procedure.

Current law requires the court to order a child to be delivered to a jail or other facility intended or used for the detention of adults when he or she has been transferred to adult court pursuant to direct file. In contrast, the bill provides that a child who has been transferred for prosecution as an adult pursuant to discretionary direct file cannot be held in a jail or other facility intended or used for the detention of adults prior to an evidentiary hearing required by the bill and a subsequent finding that the child should be prosecuted as an adult.

The bill also repeals all provisions related to transferring a child to adult court pursuant to mandatory direct file. Further, the bill provides that conspiring to commit one of the enumerated offenses in s. 985.557(1)(a), F.S.,<sup>15</sup> would no longer render a child eligible for transfer to adult court pursuant to discretionary direct file.

Additionally, the bill requires that, in order to be eligible for discretionary direct file, a 16 or 17 year old who committed a misdemeanor must have two previous adjudications for delinquent acts, one of which was a felony. Therefore, such a child with adjudications withheld would no longer meet the criteria for transfer to adult court pursuant to discretionary direct file.

The bill is effective July 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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<sup>15</sup> *Supra*, n 4.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact of the bill is indeterminate at this time. The bill requires the court to hold an evidentiary hearing within 30 days of the filing of an information in adult court to determine whether the case should remain in adult court or be transferred back to juvenile court. As a result, such hearings required by the bill will likely result in additional costs incurred by the courts.

In making a determination as to whether to keep the child's case in adult court or transfer the case back to juvenile court, the bill requires the judge to consider evaluations and assessments completed by the DJJ. Currently, the DJJ does not provide evaluations and assessments, but rather provides recommendations to the court at the sentencing hearing upon request by the judge for such a recommendation.<sup>16</sup> At that point, the recommendations are limited to whether the court should impose adult or juvenile sanctions. In FY 2017-18, 870 children were transferred to adult court pursuant to direct file and thus, would have been eligible for a hearing required by the bill.<sup>17</sup> Therefore, the DJJ is likely to incur costs associated with the production of such evaluations and assessments required by the bill.

Additionally, the bill eliminates mandatory direct file as a method of transferring a child to adult court for prosecution. However, it is likely that a child who would have been eligible for mandatory direct file would meet the criteria for discretionary direct file or judicial waiver. Nonetheless, the repeal of mandatory direct file may result in fewer children being transferred to adult court, which would leave them in the custody of the DJJ. In light of this, the DJJ may incur costs associated with an increase in the number of the children in its custody.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>16</sup> Section 985.565(3)(a), F.S.

<sup>17</sup> *Supra*, n 3.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.265, 985.557, and 985.565.

The bill reenacts the following sections of the Florida Statutes: 985.15, 985.26, and 985.556.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on April 8, 2019:**

The Committee Substitute:

- Provides that conspiring to commit one of the enumerated offenses in s. 985.557(1)(a), F.S., would no longer render a child eligible for transfer to adult court pursuant to discretionary direct file;
- Requires the court to hold an evidentiary hearing within 30 days of the filing of an information in adult court to determine whether the child should remain in adult court or rather, be transferred back to juvenile court;
- Requires the judge to consider a number of factors in making a decision as to where the child should be tried;
- Repeals all provisions related to transferring a child to adult court pursuant to mandatory direct file; and
- Provides that a child who has been transferred to adult court for prosecution cannot be held in a jail or other facility intended or used for the detention of adults prior to the evidentiary hearing required by the bill.

**B. Amendments:**

None.