

**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 192

INTRODUCER: Criminal Justice Committee and Senators Powell and Rouson

SUBJECT: Juvenile Justice

DATE: February 8, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	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 192 eliminates mandatory direct file of a child and changes the discretionary prosecution of children as adults by:

- Modifying the list of crimes that a 14 or 15 year old can be prosecuted for as an adult.
- Prohibiting the prosecution of a 16 or 17 year old as an adult for the offenses of grand theft, burglary in violation of s. 810.02(3)(b) or (4), F.S., or possession of a controlled substance.
- Providing a child transferred to adult court the opportunity to request a hearing before the court to determine if his or her case should remain in adult court.
- Requiring the state attorney to document his or her decision to prosecute a child as an adult and file it with the court at the disposition of the case.

The bill also removes involuntary mandatory waiver from the judicial waiver process and provides that only a child of 14 years of age or older can be subject to an indictment by a grand jury.

The bill prohibits a child who is incompetent and has not had competency restored, or has a pending competency hearing from being transferred to adult court until his or her competency is restored.

The bill provides that a child transferred to adult court may be sentenced as an adult, a youthful offender under ch. 958, F.S., or a juvenile. The bill also modifies and adds criteria that the court

must consider when determining what type of sanctions are appropriate. The bill prohibits children convicted as adults from losing their civil rights.

The bill requires the Department of Juvenile Justice (DJJ) to collect and annually report data to the President of the Senate and Speaker of the House of Representatives regarding children who qualify for prosecution as adults. The DJJ must work with the Office of Program Policy Analysis and Government Accountability (OPPAGA) to aggregate the data and create a report.

The bill will likely reduce the number of children transferred to the adult system, thus increasing the DJJ's population. To the extent that this reduction occurs, the bill will likely result in a negative prison bed impact on the Department of Corrections and a positive residential bed impact on the DJJ. Please see V. Fiscal Impact Statement.

The bill is effective October 1, 2017.

## II. Present Situation:

### Transferring of a Child to Adult Court

There are three methods of transferring a child to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing an information.

#### *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., provides three types of judicial waivers:

- Voluntary Waiver – the child requests to have his or her case transferred to adult court;<sup>1</sup>
- Involuntary Discretionary Waiver – the state attorney may file a motion requesting the court to transfer any case where the child is 14 years of age or older;<sup>2</sup> and
- Involuntary Mandatory Waiver – the state attorney must request the transfer of a child 14 years of age or older if the child:
  - Has been previously adjudicated delinquent for an enumerated felony<sup>3</sup> 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 was previously adjudicated delinquent or had adjudication withheld for three felony offenses, one or more of which involved the use or possession of a firearm or violence against a person.<sup>4</sup>

If the state attorney files a motion to transfer a child to adult court, the court must hold a hearing determining whether the child should be transferred.<sup>5</sup> The court must consider a variety of

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<sup>1</sup> Section 985.556(1), F.S.

<sup>2</sup> Section 985.556(2), F.S.

<sup>3</sup> The enumerated felonies are: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; aggravated assault; or burglary with an assault or battery.

<sup>4</sup> Section 985.556(3), F.S.

<sup>5</sup> Section 985.556(4), F.S.

factors in determining whether transfer is appropriate.<sup>6</sup> The court must provide an order specifying the reasons for its decision to impose adult sanctions.<sup>7</sup>

If a child is transferred to adult court by a voluntary waiver or involuntary discretionary waiver and is found to have committed the offense or a lesser included offense, the court may sentence the child as an adult, a youthful offender, or a juvenile.<sup>8</sup> If the transfer was by an involuntary mandatory waiver, the court must impose adult sanctions.<sup>9</sup>

### ***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 by a grand jury. If the grand jury returns an indictment on the charge, the child's case must be transferred to adult court.<sup>10</sup>

If the child is found to have committed the offense punishable by death or life imprisonment, the court must sentence the child as an adult.<sup>11</sup> If the child is instead 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 child as an adult, a youthful offender, or a juvenile.<sup>12</sup>

### ***Direct File***

Direct file is when a state attorney files an information charging a child in adult court. Direct file under s. 985.557, F.S., can either be discretionary or mandatory. Direct file is the predominant transfer method to adult court accounting for 98 percent of the transfers each year.<sup>13</sup>

### **Discretionary Direct File**

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

- 14 or 15 years of age and is charged with one of the following felony offenses:
  - Murder;
  - Manslaughter;
  - Sexual battery;
  - Robbery;

<sup>6</sup> Section 985.556(4)(c), F.S. Factors include the seriousness of the offense, the sophistication and maturity of the child, the record and previous history of the child, and whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

<sup>7</sup> Section 985.556(4)(e), F.S.

<sup>8</sup> Section 985.565(4)(a)2., F.S.

<sup>9</sup> Section 985.565(4)(a)3., F.S.

<sup>10</sup> Section 985.56(1), F.S.

<sup>11</sup> Section 985.565(4)(a)1., F.S.

<sup>12</sup> Section 985.565(4)(a)1.a.-c., F.S.

<sup>13</sup> *2016 Bill Analysis for SB 314 (2016)*, Department of Juvenile Justice, (September 28, 2015) (on file with the Senate Criminal Justice Committee).

- Aggravated assault;
- Aggravated child abuse;
- Arson;
- Kidnapping;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Aggravated battery;
- Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
- Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Aggravated stalking;
- Carjacking;
- Any lewd or lascivious offense committed upon or in the presence of a person less than 16;
- Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
- Specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
- Armed burglary in violation of s. 810.02(2)(b), F.S.;
- Grand theft in violation of s. 812.014(2)(a), F.S.;
- 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>14</sup>
- 16 or 17 years of age and is charged with any felony offense;<sup>15</sup> or
- 16 or 17 years of age and is charged with any misdemeanor, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.<sup>16</sup>

If a child transferred to adult court by discretionary direct file is found to have committed the offense or a lesser included offense, the court may sentence the child as an adult, a youthful offender, or a juvenile.<sup>17</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:
  - Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;<sup>18</sup>

<sup>14</sup> Section 985.557(1)(a)1.-19., F.S.

<sup>15</sup> Section 985.557(1)(b), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Sections 985.565(4)(a)2. and (b), F.S.

<sup>18</sup> The enumerated felonies include: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; or aggravated assault.

- Is charged with a forcible felony<sup>19</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>20</sup> or
- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-p., F.S.,<sup>21</sup> and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;<sup>22</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.

The court has the discretion to sentence a child transferred to adult court by mandatory direct file as an adult, a youthful offender, or a juvenile if:

- The child was 16 or 17 years old at the time of the offense, the charged offense is listed in s. 775.087(2)(a)1.a.-p., F.S., and during the commission of the offense the child actually possessed or discharged a firearm or destructive device; or
- The charged offense 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.<sup>23</sup>

However, the court must impose adult sanctions for a child transferred to adult court by mandatory direct file who was 16 or 17 years old at the time of the offense and:

- Is charged with committing a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony; or
- Is charged with committing a forcible felony 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>24</sup>

<sup>19</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 use or threat of physical force or violence against any individual.

<sup>20</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.

<sup>21</sup> The offenses include 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.

<sup>22</sup> The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

<sup>23</sup> Section 985.565(4)(a)2., F.S.

<sup>24</sup> Section 985.565(4)(a)3., F.S.

### **Imposing Adult or Juvenile Sanctions**

Judges often have discretion to impose adult or juvenile sanctions when a child is transferred to adult court and found to have committed an offense. In determining whether adult or juvenile sanctions are appropriate the judge must consider the following factors:

- 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;<sup>25</sup>
- The sophistication and maturity of the offender;
- The record and previous history of the offender including:
  - Previous contacts with the Department of Corrections (DOC), the Department of Juvenile Justice (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; and
  - Prior commitments to the DJJ, the former HRS, the 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 the DJJ services and facilities;
- Whether the 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.<sup>26</sup>

If juvenile sanctions are imposed, the court must adjudge the child to have committed a delinquent act<sup>27</sup> and may:

- Place the child on probation with the DJJ for an indeterminate period of time until he or she reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the child to the DJJ for treatment in an appropriate program for an indeterminate period of time until he or she reaches 21 years of age or sooner if discharged by the DJJ;<sup>28</sup> or

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

<sup>26</sup> Section 985.565(1)(b), F.S.

<sup>27</sup> Section 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.

<sup>28</sup> The DJJ must notify the court of its intent to discharge the child 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.

- Order, if the court determines not to impose youthful offender or adult sanctions, any of the following:
  - Probation and postcommitment probation or community service under s. 985.435, F.S.;
  - Restitution under s. 985.437, F.S.;
  - Violation of probation or postcommitment probation under s. 985.439, F.S.;
  - Commitment under s. 985.441, F.S.;
  - Work program liability and remuneration under s. 985.45, F.S.; and
  - Other dispositional issues under s. 985.455, F.S.<sup>29</sup>

If the court imposes a juvenile sanction and the DJJ determines that the sanction is unsuitable for the child, the DJJ must return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions.<sup>30</sup>

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.<sup>31</sup>

The court may not sentence a child to a combination of adult and juvenile sanctions.<sup>32</sup>

### **Effect of Transferring a Child to Adult Court**

If a child transferred to adult court is found to have committed the offense or a lesser included offense, the child must have any subsequent violations of law handled in adult court.<sup>33</sup> The court must also immediately transfer and certify all unresolved<sup>34</sup> felony cases pertaining to the child to adult court for prosecution.<sup>35</sup>

If the child 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.<sup>36</sup>

### **Suspension of Civil Rights**

The civil rights of a person are suspended in Florida upon conviction of a felony. These rights are restored by a full pardon, conditional pardon, or restoration of civil rights pursuant to s. 8, Art. IV of the State Constitution.<sup>37</sup>

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<sup>29</sup> Section 985.565(4)(b)1.-3., F.S.

<sup>30</sup> Section 985.565(4)(b) and (c), F.S.

<sup>31</sup> Section 985.565(4)(a)4., F.S.

<sup>32</sup> Section 985.565(4)(b), F.S.

<sup>33</sup> Sections 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.

<sup>34</sup> 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 yet been made. *See* s. 985.557(3)(b), F.S.

<sup>35</sup> Sections 985.556(5), 985.56(4), and 985.557(3), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> Section 944.292(1), F.S.

### III. Effect of Proposed Changes:

#### **Judicial Wavier (Section 2, amending s. 985.556, F.S.)**

The bill eliminates involuntary mandatory waiver from the judicial wavier process. Related to hearings on transfer requests, the bill also repeals the factor which required the court to consider the desirability of the trial and disposition of the case be handled in the same court as the child's codefendants. Furthermore, the bill adds a factor to require the court to consider a child's mental development in determining whether a child is transferred to adult court.

#### **Indictment of a Juvenile (Section 4, amending s. 985.56, F.S.)**

The bill specifies that only a child of 14 years of age or older can be subject to an indictment by a grand jury.

#### **Prosecuting Children as Adults (Direct File) (Section 3, amending s. 985.557, F.S.)**

The bill eliminates mandatory direct file and modifies the discretionary prosecution of children as adults (discretionary direct file).

The bill requires the state attorney to document his or her decision to prosecute a child as an adult and file it with the court at the disposition of the case. The documentation<sup>38</sup> must include:

- Whether adult codefendants were involved with the case.
- The length of time the child spent in a detention facility or jail-awaiting disposition.
- Whether any discovery was conducted on the case at the time of the child's transfer to adult court.
- Whether the child waived the right to a trial.
- If the decision to transfer or not transfer to adult court resulted in a plea agreement, the details of the plea agreement, including previous plea offers made by the state but not accepted by the child, and any conditions placed on the plea offer.
- Whether the judge sentenced the child to a disposition other than what the prosecutor was offering in exchange for the child not being prosecuted as an adult.
- Whether the child had to waive statutory limits on secure detention in order to avoid being prosecuted as an adult, and, if available, the amount of time the child who waived secure detention limits actually spent in secure detention.

#### ***Discretionary Prosecution of Children as Adults – 14 or 15 years of age***

The bill amends the following qualifying offenses that a child 14 or 15 years of age can be prosecuted for as an adult:

- Robbery if it occurs while carrying a firearm in violation of s. 812.13(3)(a), F.S.;
- Armed burglary if it occurs while there is another person in the dwelling, structure, or conveyance at the time the offender enters or remains; and
- Aggravated battery if it results in great bodily harm, permanent disability, or permanent disfigurement to a person.

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<sup>38</sup> The state attorney of each judicial circuit must collect the documentation monthly and submit it to the DJJ.

The bill removes grand theft and grand theft of a motor vehicle from the list of qualifying offenses that a child 14 or 15 years of age can be prosecuted for as an adult.

***Discretionary Prosecution of Children as Adults – 16 or 17 years of age***

The bill prohibits the prosecution of a 16 or 17 year old as an adult for the offenses of:

- Grand theft;
- Burglary in violation of s. 810.02(3)(b) or (4), F.S.; or
- Possession of a controlled substance.

**Competency Transfer Prohibitions (Section 3, amending s. 985.557, F.S., and Section 4, amending s. 985.56, F.S.)**

A child eligible for discretionary prosecution as an adult or who is indicted<sup>39</sup> cannot be transferred to adult court until his or her competency is restored if he or she has:

- A pending competency hearing in juvenile court; or
- Been previously found to be incompetent to proceed.

**Fitness Hearings Before a Judge (Section 3, amending s. 985.557, F.S.)**

A child transferred to adult court by discretionary prosecution may request a hearing before the court to determine whether public safety would be best served by keeping the child in adult court. In making this determination, the court must consider:

- The seriousness of the offense;
- The extent of the child's alleged participation or role in the offense;
- The sophistication, maturity, and mental development of the child;
- Any prior adjudications or adjudications withheld of the child; and
- Any other consideration set forth in s. 985.556(3)(c), F.S.

**Data Collection Relating to Prosecuting Children as Adults (Section 3, amending s. 985.557, F.S.)**

The bill requires the DJJ, beginning March 1, 2018, to collect data regarding children who qualify to be prosecuted as adults. This data includes, but is not limited to:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence and offense;
- Prior adjudications or adjudications withheld;
- Prior periods of probation including any violations of probation;
- Previous contacts with law enforcement agencies or the courts which resulted in a civil citation, arrest, or charges being filed with the state;
- Initial charges;
- Charges at disposition;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel or had waived counsel;

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<sup>39</sup> The time limits provided in s. 985.56(2), F.S., are tolled while the child is incompetent.

- Risk assessment instrument score;
- The child’s medical, mental health, substance abuse, or trauma history;
- The child’s history of 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 below average intellectual functioning;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a children-in-need-of-services or families-in-need-of-services petition or dependency petition;
- Whether the child was transferred for criminal prosecution as an adult;
- The case resolution in juvenile court or adult court; and
- Information generated by the office of the state attorney in each judicial circuit under s. 985.557(1)(c)1., F.S.

Beginning March 1, 2018, the DJJ must also collect the following data on a child transferred for prosecution as an adult:

- Disposition data, including, but not limited to, whether the child received adult sanctions, juvenile sanctions, or diversion and, if sentenced to prison, the length of the prison sentence or the enhanced sentence; and
- Whether the child was previously found incompetent to proceed in juvenile court.

The DJJ must work with Office of Program Policy and Analysis and Government Accountability (OPPAGA) to generate a report analyzing the aggregate of data discussed above. Such report must be presented to the Governor, President of the Senate, and Speaker of the House by January 31, annually beginning January 31, 2019.

Additionally, the DJJ must work with the OPPAGA to analyze every juvenile case transferred to adult court from July 1, 2016, and June 30, 2017. A report is due to the Governor, President of the Senate, and Speaker of the House by January 31, 2018.

### **Imposing Adult or Juvenile Sanctions (Section 5, amending s. 985.565, F.S.)**

The bill adds additional criteria and modifies existing criteria that the court must consider when determining whether to impose adult or juvenile sanctions.

The bill adds the following additional criteria that courts must consider:

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

The bill modifies the following existing criteria that courts must consider:

- The sophistication and maturity of the child to include:
  - The child’s age, maturity, 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 child to include:
  - Previous contacts or commitments with the DOC, DJJ, the former HRS, and DCF and *the adequacy and appropriateness of the services provided to address the child's needs*;
  - Previous contacts with law enforcement agencies and the courts;
  - History of abuse, abandonment or neglect, or foster care placements; and
  - Identification of the child as having a disability or having previously received mental health services or treatment.

The bill provides that a child transferred pursuant to indictment, information (discretionary prosecution), indictment, or waiver of juvenile court jurisdiction and found to have committed a violation of law or a lesser included offense may be sentenced:

- As an adult;
- As a youthful offender under ch. 958, F.S.; or
- As a juvenile.

The DOC must make every effort to keep a child sentenced to the DOC completely separated from adult prisoners.

#### **Suspension of Civil Rights (Section 1, amending s. 944.292, F.S.)**

The bill specifies that a child convicted as an adult will not be subject to the suspension of his or her civil rights.

The bill also amends ss. 985.03 and 985.15, F.S., to reflect changes made by the bill and reenacts s. 985.514, F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted section.

The bill is effective October 1, 2017.

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

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill is likely to reduce the number of children transferred to the adult system, thus increasing the DJJ's population. The Criminal Justice Impact Conference has not provided an estimate of the bill's impact, however to the extent that this reduction occurs, the bill will likely result in a negative prison bed impact (a decrease in the number of prison beds) on the DOC and a positive residential bed impact (an increase in the number of beds) on the DJJ.

The DJJ and the DOC have not yet submitted analyses for this bill.

However, for a similar bill filed in 2016, the DJJ's conservative estimate was that the bill would avert approximately 644 youth from direct file. Based on the average lengths of stay for each level and using current average per diem rates and current cost per youth under supervision for FY 2014-15, the DJJ estimated the fiscal impact of the bill to be a minimum of \$35.8 million annually.<sup>40</sup>

This fiscal impact estimate did not take into consideration the need to procure additional programs and to build or procure facilities to accommodate this additional population. The DJJ current operating capacity is just over 2,100 residential beds and has a utilization rate of 92 percent. If sufficient beds were not made available, youth awaiting placement to a residential program would be housed in secure detention or in their home communities, creating a significant backlog of youth awaiting placement.<sup>41</sup>

Alternatively, the DJJ would require funding to procure additional programs and to build or procure facilities to house these youths in addition to the \$35.8 million addressed previously. Construction costs could exceed \$100 million to provide bed space sufficient for the high-risk and max-risk residential programs. The per diem rates used were based on per diems for programs that utilize the DJJ (state-owned) facilities. Per Diem rates for programs that do not utilize state-owned facilities are potentially higher.<sup>42</sup>

Additionally, the bill requires the DJJ to collect additional data for review and analysis which would require modification of the Juvenile Justice Information System at an

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<sup>40</sup> 2016 Bill Analysis for SB 314 (2016), Department of Juvenile Justice, (September 28, 2015) (on file with the Senate Criminal Justice Committee).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

estimated cost of \$93,600. The time necessary for analysis, design, testing, and implementation could take up to 6 months to complete.<sup>43</sup>

Any resources required by the OPPAGA to assist the DJJ with the annual reporting required by the bill is unknown at this time.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

Data of the DJJ's Office of Research and Data Integrity show a downward trend in adult court transfers between FY 2010-2011 and FY 2014-2015, which exceeded the decline in felony arrests. Transfers declined 46 percent over the five-year period, while felony arrests declined 20 percent. During FY 2014-2015, a total of 1,282 individual youths were transferred to the adult court in Florida.<sup>44</sup>

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 944.292, 985.03, 985.15, 985.556, 985.557, 985.56, and 985.565.

This bill reenacts section 985.514 of the Florida Statutes.

#### **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 February 6, 2017:**

The Committee Substitute:

- Prohibits children convicted as adults from losing their civil rights.
- Removes involuntary mandatory waiver from the judicial waiver process.
- Modifies the crimes that a 14 or 15 year old can be prosecuted for as an adult.
- Excludes offenses that a 16 or 17 year old can be prosecuted for as an adult.
- Requires the state attorney to document his or her decision on whether to prosecute a child as an adult.
- Clarifies that the DOC must keep any child 14 years of age but not yet 18 years of age separate from adult prisoners.
- Provides a child transferred to adult court the opportunity to request a hearing before the court to determine if his or her case remains in adult court.
- Clarifies that a child who is incompetent and has not been restored to competency, or has a pending competency hearing cannot be transferred to adult court until his or her competency is restored.

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

- Clarifies that the time limits in s. 985.56(2), F.S., are tolled while the child is incompetent.
- Provides that only a child of 14 years of age or older can be subject to an indictment by a grand jury.
- Changes the effective date from July 1, 2017, to October 1, 2017.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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