

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.)

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

BILL: SB 192

INTRODUCER: Senators Powell and Rouson

SUBJECT: Juvenile Justice

DATE: January 20, 2017

REVISED: 02/03/17

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	<u></u>	<u></u>	<u>ACJ</u>	<u></u>
3.	<u></u>	<u></u>	<u>AP</u>	<u></u>

I. Summary:

SB 192 eliminates mandatory direct file of a child and modifies the discretionary direct file to create a system based on the child's age at the time of the offense and the type of the offense.

Specifically, the bill allows a state attorney to file an information (direct file a child) if, in the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered for a child who was:

- 16 years of age or older and younger than 18 years of age at the time of the alleged offense and is charged with an enumerated offense;
- 14 years of age or older and younger than 16 years of age at the time of the alleged offense and is charged with an enumerated offense;
- 15 years of age or older and younger than 18 years of age at the time the of alleged offense and has had a prior adjudication for an offense that would be a felony if committed by an adult; or
- 17 years of age or older and younger than 18 years of age at the time of the alleged offense, has had a prior adjudication for an offense that would be a felony if committed by an adult, and has had the victim request that the offense be filed in adult court.

The bill prohibits a child eligible for direct file or who was indicted to be transferred to adult court if he or she has a pending competency hearing in juvenile court or has been previously found incompetent to proceed and has not been restored to competency by the court.

The bill removes the prohibition against imposing both adult and juvenile sanctions and creates a new blended sentencing scheme that allows the court to sentence a child to a combination of adult or juvenile sanctions. 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 or to a blended sentence. The bill also modifies and adds criteria that the court must consider when determining what type of sanctions are appropriate.

The bill specifies the sanctions available for a blended sanction sentence and requires the court to render an order including specific findings of fact and the reasons for its decisions to impose adult or blended sanctions.

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 direct file.

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 July 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;¹
- 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;² 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 felony³ 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.⁴

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.⁵ The court must consider a variety of

¹ Section 985.556(1), F.S.

² Section 985.556(2), F.S.

³ 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.

⁴ Section 985.556(3), F.S.

⁵ Section 985.556(4), F.S.

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

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.⁸ If the transfer was by an involuntary mandatory waiver, the court must impose adult sanctions.⁹

Indictment

Section 985.56, F.S., specifies that a child 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.¹⁰

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.¹¹ 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.¹²

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.¹³

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;

⁶ 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.

⁷ Section 985.556(4)(e), F.S.

⁸ Section 985.565(4)(a)2., F.S.

⁹ Section 985.565(4)(a)3., F.S.

¹⁰ Section 985.56(1), F.S.

¹¹ Section 985.565(4)(a)1., F.S.

¹² Section 985.565(4)(a)1.a.-c., F.S.

¹³ *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.¹⁴
- 16 or 17 years of age and is charged with any felony offense;¹⁵ 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.¹⁶

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.¹⁷

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;¹⁸

¹⁴ Section 985.557(1)(a)1.-19., F.S.

¹⁵ Section 985.557(1)(b), F.S.

¹⁶ *Id.*

¹⁷ Sections 985.565(4)(a)2. and (b), F.S.

¹⁸ 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 felony¹⁹ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;²⁰ or
- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-p., F.S.,²¹ and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;²² 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.²³

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.²⁴

¹⁹ 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.

²⁰ 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.

²¹ 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.

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

²³ Section 985.565(4)(a)2., F.S.

²⁴ 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;²⁵
- 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.²⁶

The court is required to consider a presentence investigation (PSI) report prepared by the DOC regarding the suitability of a child for disposition as an adult or juvenile. The PSI report must include recommendations as to disposition prepared by the DJJ.²⁷ The court must give all parties²⁸ 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.²⁹

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

²⁶ Section 985.565(1)(b), F.S.

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

²⁸ Section 985.565(3)(b), F.S. This includes the parent, guardian, or legal custodian of the offender; the offender's counsel; the state attorney; representatives of the DOC and DJJ; the victim or victim's representative; representatives of the school system; and law enforcement involved in the case.

²⁹ Section 985.565(3)(b) and (c), F.S. 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.

If juvenile sanctions are imposed, the court must adjudge the child to have committed a delinquent act³⁰ 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;³¹ or
- 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.³²

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.³³

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.³⁴

The court may not sentence a child to a combination of adult and juvenile sanctions.³⁵

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.³⁶ The court must also immediately transfer and certify all unresolved³⁷ felony cases pertaining to the child to adult court for prosecution.³⁸

³⁰ 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.

³¹ 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.

³² Section 985.565(4)(b)1.-3., F.S.

³³ Section 985.565(4)(b) and (c), F.S.

³⁴ Section 985.565(4)(a)4., F.S.

³⁵ Section 985.565(4)(b), F.S.

³⁶ 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.

³⁷ 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.

³⁸ Sections 985.556(5), 985.56(4), and 985.557(3), F.S.

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.³⁹

III. Effect of Proposed Changes:

Direct File (Section 1 amending s. 985.557, F.S.)

The bill substantially rewords s. 985.557, F.S., by eliminating the mandatory direct file system and modifying the discretionary direct file system to create a system based on the child's age at the time of the offense.

Children 16 and 17 years of age

A state attorney may file an information (direct file a child) if, in the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered for a child who:

- Was 16 years of age or older and younger than 18 years of age at the time of the alleged offense; and
- Is charged with:
 - Murder;
 - Manslaughter;
 - Sexual battery;
 - Robbery;
 - Aggravated assault;
 - Aggravated child abuse;
 - Arson;
 - Kidnapping;
 - Unlawful throwing, placing, or discharging of a destructive device and bomb;
 - Aggravated battery;
 - Carrying, displaying, using, or threatening or attempting to use a weapon or firearm in furtherance of the commission of a felony;
 - Possessing or discharging a firearm on school property in violation of s. 790.115, F.S.;
 - Home invasion robbery;
 - Aggravated stalking;
 - Carjacking;
 - Aggravated animal cruelty by intentional acts;
 - DUI or BUI resulting in fatality, great bodily harm, permanent disability, or permanent disfigurement to a person;
 - Felony DUI or BUI in violation of s. 316.193(2)(b)1. or 3., F.S., or s. 327.35(2)(b)1. or 3., F.S., respectively;
 - Leaving the scene of an accident resulting in fatality, great bodily harm, permanent disability, or permanent disfigurement to a person;
 - Any lewd or lascivious offense committed upon or in the presence of a person younger than 16 years of age; or
 - Burglary in violation of s. 810.02(2)(a), F.S., burglary of dwelling in violation of ss. 810.02(2) or (3), F.S., or burglary in violation of ss. 810.02(3)(c) or (d), F.S.

³⁹ *Id.*

Children 14 and 15 years of age

A state attorney may file an information (direct file a child) in adult court if, in the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered for a child who:

- Was 14 years of age or older and younger than 16 years of age at the time of the alleged offense; and
- Is charged with:
 - Murder;
 - Manslaughter;
 - Sexual battery;
 - Robbery;
 - Arson;
 - Kidnapping;
 - Aggravated battery;
 - Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
 - Home invasion robbery;
 - Carjacking; or
 - Burglary of a dwelling or burglary in violation of s. 810.02(2)(a), F.S.

Children 15, 16, and 17 years of age with prior adjudication

A state attorney may file an information (direct file a child) in adult court if, in the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered for a child who:

- Was 15 years of age or older and younger than 18 years of age at the time of the alleged offense; and
- Has had a prior adjudication for an offense that would be a felony if committed by an adult.

Children 17 years of age charged with simple battery

A state attorney may file an information (direct file a child) in adult court for a simple battery if, in the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered for a child who:

- Is 17 years of age or older and younger than 18 years of age at the time of the alleged offense;
- Has had a prior adjudication for an offense that would be a felony if committed by an adult; and
- Has had the victim request that the case be filed in adult court.

Competency Transfer Prohibitions (Section 1, amending s. 985.557, F.S., and Section 2, amending s. 985.56, F.S.)

A child eligible for direct file or who is indicted cannot be transferred to adult court if he or she has:

- A pending competency hearing in juvenile court; or

- Been previously found to be incompetent to proceed and has not been restored to competency by a court.

Effect of Transferring a Child to Adult Court (Section 1, amending s. 985.557, F.S.)

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. The court must also immediately transfer and certify all unresolved⁴⁰ felony cases pertaining to the child to adult court for prosecution.

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 receive the sanctions available before they were transferred.

Direct File Data Collection (Section 1, amending s. 985.557, F.S.)

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

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence and offense;
- Prior adjudicated offenses and 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 or had waived counsel;
- Risk assessment instrument score;
- The child's medical, mental health, substance abuse, or trauma history;
- 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 been the subject of a children-in-need-of-services or families-in-need-of-services petition or dependency petition; and
- The case resolution in juvenile court or adult court.

If a child is transferred to adult court the DJJ must also collect disposition data, including, but not limited to, whether the child received adult, juvenile, or blended sanctions, or diversion and, if the child was sentenced to prison, the length of the sentence or enhanced sentence.

The bill does not specify when this annual report must be made.

⁴⁰ 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)(b), F.S.

Potential Sanctions (Section 3, amending s. 985.565, F.S.)

Unlike current law, the bill does not require the court to impose adult sanctions. The bill also removes the prohibition against imposing both adult and juvenile sanctions and creates a new blended sentencing scheme that allows the court to sentence a child to a combination of adult or juvenile sanctions. The bill provides that a child transferred pursuant to an information (direct file), 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.;
- As a juvenile; or
- To a blended sentence.

Specifically, a child's sentence may include a term of imprisonment, community control, probation, commitment to the DJJ for treatment in an appropriate program, juvenile probation, any combination of these sanctions, or any other sanction authorized by law. The sentence may not exceed the maximum term that an adult may serve for the same offense.

Determining Whether to Impose Adult, Juvenile, or Blended Sanctions

The bill adds additional criteria and modifies existing criteria that the court must consider when determining whether to impose adult, juvenile, or blended 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 court may consider any reports that may assist in its decision, including, but not limited to, prior predisposition reports, psychosocial assessments, individualized education plans, developmental assessments, school records, abuse or neglect reports, home studies, protective investigations, and psychological or psychiatric evaluations. The child, the state, and defense counsel have the right to examine the reports, and to question the parties responsible for them at the sentencing hearing.

Blended Sanctions

If the court imposes blended sanctions it must withhold adjudication of guilt as an adult and adjudge the child to have committed a delinquent act.⁴¹ The court must also place the child on adult probation, youthful offender probation, or community control through the DOC with a special condition to successfully complete a residential commitment program with the appropriate restrictiveness level. The judge may also impose any other adult sanction authorized by law and the enforcement of an order of restitution or probation previously ordered in any juvenile proceeding.

In determining the appropriate restrictiveness level for a child the court must consider the recommendations of the DJJ, the state attorney, and the child's attorney when determining placement, but is not bound by any recommendation. The court may order the child's incarceration in a juvenile detention center or county jail pending placement in the residential commitment program.

The DJJ is required to notify the court and the DOC of its intent to discharge a child from the residential commitment program no later than 14 days prior to discharge. Failure of the court's timely response to the notice is considered approval for discharge.

The bill requires the court to render an order including specific findings of fact and the reasons for its decisions to impose adult or blended sanctions.

The bill also amends s. 985.556, F.S., to reflect changes made in the act and reenacts ss. 985.15, 985.265, 985.514, 985.56, and 985.556, F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴¹ An adjudication of delinquency may not be deemed a conviction and may not impose any civil disabilities resulting from a conviction.

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 an analysis 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 \$35.7 million annually.⁴²

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 back log of youth awaiting placement.

Alternatively, the DJJ would require funding to procure additional programs and to build or procure facilities to house these youths in addition to the \$35.7 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.

⁴² 2016 Bill Analysis for HB 129 (2016), Department of Juvenile Justice, (October 26, 2015) (on file with the Senate Criminal Justice Committee).

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

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.⁴³

Under current law and the bill children under 14 years of age cannot be subject to a direct file.

The bill removes s. 985.557(2)(d)5., F.S., which provides that the DOC should ensure that a child 16 or 17 years of age and sentenced to prison must be kept completely separated from adult offenders. Federal regulations require that prisoners under the age of 18 must be housed separately from adult prisoners.⁴⁴ Language could be added to the bill to clarify that children under 18 must be housed separately from adult prisoners.

The bill provides that a blended sentence can include enforcement of a prior restitution or probation order. Clarification could be needed to the extent that this allows for a longer statute of limitation period or the enforcement of an order on a closed case.

The bill is likely to reduce the number of children transferred to the adult system, thus increasing the DJJ's population which could make implementation by the July 1, 2017, effective date difficult.

VIII. Statutes Affected:

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

This bill reenacts the following sections of the Florida Statutes: 985.15, 985.265, and 985.514.

⁴³ 2016 Bill Analysis for SB 314 (2016), Department of Juvenile Justice, (September 28, 2015) (on file with the Senate Criminal Justice Committee).

⁴⁴ 28 CFR 115.14

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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