

**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: SB 392

INTRODUCER: Senator Bracy

SUBJECT: Juvenile Justice

DATE: February 5, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 392 makes several changes to the minimum age in which a child qualifies for transfer to adult court.

The bill changes the age in which a child can be transferred to adult court by involuntary judicial waiver from 14 to 15 years of age.

The bill also changes the ages in which a child can be transferred to adult court by discretionary direct file. The bill provides that the state attorney may direct file a child when a child is:

- 15 or 16 years of age (currently 14 or 15) and is charged with an enumerated felony offense;
- 17 years of age (currently 16 or 17) at the time any felony was committed;
- 17 years of age (currently 16 or 17) at the time the misdemeanor was committed, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.

The bill changes the age in which a child can be transferred to adult court by mandatory direct file from 16 or 17 years of age to 17 years of age.

The bill will likely reduce the number of children transferred to the adult system, which will likely result in a significant negative fiscal impact on the DJJ. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

## 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. To transfer a child pursuant to judicial waiver, the state attorney must file a motion and the court must approve of the transfer.<sup>1</sup> Section 985.556, F.S., provides for three types of judicial waivers:

- Voluntary Waiver – the child requests to have his or her case transferred to adult court;<sup>2</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 at the time the alleged delinquent act or violation of law was committed;<sup>3</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>4</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>5</sup>

#### *Indictment by a Grand Jury*

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>6</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 be either discretionary or mandatory, and is accomplished exclusively by the state attorney without requiring the court's approval.<sup>7</sup> Direct file is the predominant transfer method to adult court, accounting for 97.7 percent of the transfers in 2016-17.<sup>8</sup>

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

<sup>2</sup> Section 985.556(1), F.S.

<sup>3</sup> Section 985.556(2), F.S.

<sup>4</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. *See* s. 985.556(3)(a), F.S.

<sup>5</sup> Section 985.556(3), F.S.

<sup>6</sup> Section 985.56(1), F.S.

<sup>7</sup> Section 985.557, F.S.

<sup>8</sup> Department of Juvenile Justice, *2018 Bill Analysis for SB 392*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

### 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 a child is:

- 14 or 15 years of age and 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 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;
  - 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>9</sup>
- 16 or 17 years of age and is charged with any felony offense;<sup>10</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>11</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:

<sup>9</sup> Section 985.557(1)(a)1.-19., F.S.

<sup>10</sup> Section 985.557(1)(b), F.S.

<sup>11</sup> *Id.*

- Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;<sup>12</sup>
- Is charged with a forcible felony<sup>13</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>14</sup> or
- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)1.a.-p., F.S.,<sup>15</sup> and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;<sup>16</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.

### III. Effect of Proposed Changes:

The bill changes the age in which a child can be transferred to adult court by involuntary judicial waiver from 14 to 15 years of age.

The bill also changes the ages in which a child can be transferred to adult court by discretionary direct file. The bill provides that the state attorney may direct file a child when a child is:

- 15 or 16 years of age (currently 14 or 15) and is charged with an enumerated felony offense;<sup>17</sup>
- 17 years of age (currently 16 or 17) at the time any felony was committed; or
- 17 years of age (currently 16 or 17) at the time the misdemeanor was committed, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.

The bill changes the age in which a child can be transferred to adult court by mandatory direct file from 16 or 17 years of age to 17 years of age. The bill maintains the provision that a state attorney must direct file a child of any age who is alleged to have committed an act that involves causing serious bodily injury or death to a person while possessing a stolen vehicle.

<sup>12</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>13</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>14</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>15</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 other violation of s. 893.135(1), F.S. Section 775.087(2)(a)1.a.-p., F.S.

<sup>16</sup> The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

<sup>17</sup> *See* s. 985.557(1)(a)1.-19., F.S.

Current law requires the Department of Corrections (DOC) to make every reasonable effort to ensure that any child 16 or 17 years of age who is convicted and sentenced in adult court pursuant to direct file be completely separated from adult offenders in the facility. The bill repeals this age requirement and directs the DOC to keep separate a child of *any age* from adult offenders in the facility.

The bill also reenacts ss. 985.15(1), 985.26(2)(c), 985.265(5), and 985.565(4), F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted section.

The bill is effective July 1, 2018.

#### **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, which will likely result in a significant negative prison bed impact (a decrease in the number of prison beds) on the DOC and a significant positive residential bed impact (an increase in the number of beds) on the Department of Juvenile Justice (DJJ). The DJJ estimates that the bill would result in 132 juveniles being ineligible for transfer to adult court and the cost for detention and treatment for these additional juveniles would be \$12,270,113. The DJJ also predicts that new facilities would need to be procured or retrofitted to serve the increased population.<sup>18</sup>

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<sup>18</sup> Department of Juvenile Justice, *2018 Bill Analysis for SB 392 (2018)*, (January 17, 2018) (on file with the Senate Criminal Justice Committee).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

This bill reenacts the following sections of the Florida Statutes: 985.15, 985.26, 985.265, and 985.565.

**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.