

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 575 Direct Filing of an Information
SPONSOR(S): Criminal Justice Subcommittee, Bush
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Bruno	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The juvenile delinquency system focuses on treating and rehabilitating children who violate criminal laws. Children in the delinquency system may complete a civil citation or diversion program, probationary sentence, or be committed to one of the Department of Juvenile Justice's (DJJ) commitment programs. The juvenile process is less harsh than the adult court process; for example:

- A judge decides the facts in a juvenile adjudicatory hearing rather than a jury;
- Juveniles are not subject to monetary bail; and
- Probation may only last until age 19, and commitment until age 21.

Under certain circumstances, the state may or sometimes must transfer a child's case to adult court by direct filing an information. This process is not judicially reviewed.

CS/HB 575 repeals all mandatory direct file provisions. The bill allows the state attorney to direct file an information against a qualifying child when the public interest requires that adult sanctions be considered and imposed, removing language putting that determination in the state attorney's judgment and discretion. The bill removes conspiracy to commit any of the enumerated offenses from the eligibility criteria for discretionary direct file of a 14- or 15-year-old. The bill also requires that qualifying priors for discretionary direct file of a misdemeanor charge are adjudications rather than withheld adjudications.

The bill requires the adult court to hold a due process hearing to determine whether it is necessary for the protection of the community that a direct-filed child is prosecuted in adult court. The court must hold this hearing within 30 days of the information being filed, and must consider enumerated criteria.

The bill prohibits holding a child subject to direct file in adult jail pending a court determination that the child may properly be prosecuted in adult court.

The bill may have a negative impact on the number of jail and prison beds. DJJ, however, may incur additional costs for cases resolved in the juvenile system that were previously subject to mandatory direct file.

The bill provides an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The juvenile delinquency system focuses on treating and rehabilitating children who violate criminal laws. Children in the delinquency system may complete a civil citation or diversion program,¹ probationary sentence, or be committed to one of the Department of Juvenile Justice's (DJJ) commitment programs.² The juvenile process is less harsh than the adult court process; for example:

- A judge decides the facts in a juvenile adjudicatory hearing rather than a jury;³
- Juveniles are not subject to monetary bail;⁴ and
- Probation may only last until age 19, and commitment until age 21.⁵

Subject to limited exceptions, a juvenile record is automatically expunged at either age 21 or 26, obliterating the record and allowing the subject of the record to lawfully deny it in most circumstances.⁶ Expunction of an adult criminal record, on the other hand, has much more stringent requirements.⁷

A child may be transferred to adult court through one of three ways:

- Judicial waiver, in which the court transfers the child upon the state's motion after holding a waiver hearing;⁸
- Direct file, in which the state attorney files an information to transfer the child;⁹ or
- Indictment, in which the grand jury charges the child by indictment for a capital offense or an offense punishable by life in prison.¹⁰

Direct file accounts for 98 percent of juvenile transfers to adult court.¹¹ However, the only transfer method receiving judicial review is judicial waiver. A court must conduct a hearing on a motion for waiver and consider:

- The seriousness of the offense.
- Whether the community is best served by transferring the child to adult court.
- Whether the offense was against persons or property.
- The probable cause as found in the report, affidavit, or complaint.
- Whether the child's associates are adults or children who are to be tried as adults.
- The sophistication and maturity of the child.
- The child's criminal and other history.
- The protection of the community and likelihood of rehabilitation if the child remains in juvenile court.¹²

¹ Ss. 985.12, 985.125, 985.15, 985.155, and 985.16, F.S.

² S. 985.433, F.S.

³ S. 985.35, F.S.

⁴ S. 985.245, F.S.

⁵ S. 985.0301, F.S.

⁶ S. 943.0515, F.S.

⁷ S. 943.0585, F.S.

⁸ S. 985.556, F.S.

⁹ S. 985.557, F.S.

¹⁰ S. 985.56, F.S.

¹¹ Department of Juvenile Justice, *Update on Transfer to Adult Court Trends in Florida* (Jan. 9, 2018), at 16.

¹² S. 985.556(4), F.S.

Judicial waiver and direct file method include mandatory and discretionary criteria for transfer:

Transfer Method	Mandatory	Discretionary
Judicial Waiver	Child was 14 or older when he or she committed a violent crime and was previously adjudicated for an enumerated crime. ¹³	Child was 14 or older when he or she committed a crime.
	Child was 14 or older when he or she committed a crime and was previously found to have committed three felony offenses, one of which involved use or possession of a firearm or violence against a person.	
Direct File	Child was 16 or 17 when he or she committed a violent offense and has previously been adjudicated for an enumerated offense. ¹⁴	Child was 14 or 15 when he or she committed an enumerated offense. ¹⁵
	Child was 16 or 17 when he or she committed a forcible felony ¹⁶ and has previously been adjudicated or had adjudication withheld for three felonies occurring at least 45 days apart, unless the state has good cause to believe exceptional circumstances exist to leave the case in juvenile court.	
	Child is charged with stealing a motor vehicle, and the driver of the vehicle caused serious bodily injury or death to a person not involved in stealing the vehicle while the child was in possession of the vehicle.	Child was 16 or 17 when he or she committed: <ul style="list-style-type: none"> • A felony offense; or • A misdemeanor, if the child has two prior adjudications or withheld adjudications, one of which is a felony.
	Child was 16 or 17 when he or she committed an 10/20/Life ¹⁷ offense, meaning the child used or possessed a firearm in the commission of a violent felony or drug trafficking.	

¹³ Enumerated offenses are the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery. S. 985.556(3)(a), F.S.

¹⁴ Enumerated offenses are commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault. S. 985.557, F.S.

¹⁵ Enumerated offenses are the commission of, attempt to commit, or conspiracy to commit arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawfully throwing, placing, or discharging a destructive device or bomb; armed burglary; burglary of a dwelling with aggravating circumstances; burglary with a battery; aggravated battery; lewd or lascivious offense on a person younger than 16; carrying, displaying, using, or threatening to use a weapon or firearm during the commission of a felony; grand theft with aggravating circumstances; possessing or discharging a weapon on school property; home invasion robbery; carjacking; or grand theft of a motor vehicle under certain circumstances. S. 985.557(1)(a), F.S.

¹⁶ "Forcible felony" means 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. S. 776.08, F.S.

¹⁷ S. 775.087, F.S.

A child transferred to adult court is treated like an adult in most ways. The adult court procedural rules apply, including trial by jury. With the exception of the death penalty and a life sentence without the possibility of parole,¹⁸ a child faces the same exposure to penalty as an adult. A court may, however, sentence a child prosecuted as an adult to juvenile sanctions, unless the child is charged with a 10/20/Life offense in which he or she:

- Actually possessed a firearm and has previously been:
 - Adjudicated, or had adjudication withheld, for a forcible felony or any offense involving a firearm; or
 - Placed in a residential commitment program;
- Discharged a firearm.¹⁹

Total adult court transfers decreased 62 percent since FY 2010-11.²⁰ Mandatory direct filed cases account for a larger percentage of adult transfers than in FY 2010-11, as prosecutors have used discretionary direct file less frequently.²¹

Effect of Proposed Changes

CS/HB 575 repeals all mandatory direct file provisions. The bill allows the state attorney to direct file an information against a qualifying child when the public interest requires that adult sanctions be considered and imposed, removing language putting that determination in the state attorney's judgment and discretion. The bill removes conspiracy to commit any of the enumerated offenses from the eligibility criteria for discretionary direct file of a 14- or 15-year-old. The bill also requires that qualifying priors for discretionary direct file of a misdemeanor charge are adjudications rather than withheld adjudications.

The bill requires the adult court to hold a due process hearing to determine whether it is necessary for the protection of the community that a direct-filed child is prosecuted in adult court. The court must hold this hearing within 30 days of the information being filed, and must consider:

- Evaluations and assessments completed by 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 offense;
 - The child's age, maturity, intellectual capacity, and mental and emotion health at the time of the offense;
 - The effect of characteristics attributable to the child's youth on the child's judgment;
- The record and previous history of the child, including:
 - Previous contacts with DJJ, the Department of Corrections, the Department of Children and Families, other law enforcement agencies, and the courts;
 - Prior periods of probation;
 - Prior adjudications, with greater weight given to violent offenses;
 - Prior commitments;
 - History of trauma, abuse, neglect, foster care placement, failed adoption, fetal alcohol syndrome, exposure to controlled substances at birth, and below average intellectual functioning;
 - Requiring exceptional student education or previously receiving psychological services;
 - Whether the child has previously been convicted and sentenced as an adult;
- The nature of the alleged offense and the child's participation, including:
 - Whether the offense is punishable by death or life imprisonment;

¹⁸ *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012).

¹⁹ S. 985.565, F.S.

²⁰ Department of Juvenile Justice, *supra*, at 17.

²¹ Office of Program Policy Analysis and Government Accountability, *Direct File of Children to Adult Court is Decreasing; Better Data Needed to Assess Sanctions*, Report No. 17-07 (Mar. 2017), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1706rpt.pdf> (last visited Mar. 23, 2019).

- Whether the offense is alleged to have been committed in an aggressive, violent, or premeditated manner;
- The extent of the child's participation in the offense;
- The effect of familial or peer pressure on the child's actions;
- The prospects for adequate protection of the public and likelihood of reasonable rehabilitation of the child by use of either DJJ's or adult court procedures, services, and facilities;
- Cost-effective alternatives available to divert the child from the criminal and juvenile justice systems;
- 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 to the community; and
- Whether the child's best interests would be served by prosecuting the child in juvenile court.

The adult court retains jurisdiction of the case unless it determines by a preponderance of the evidence that the child should be returned to juvenile court. The court must enter an order including specific findings of facts and reasons for its decision, which both parties may immediately challenge through interlocutory appeal.

The bill prohibits holding a child subject to direct file in adult jail pending a court determination that the child may properly be prosecuted in adult court.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 985.265, F.S., relating to detention transfer and release; education; adult jails.

Section 3: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative impact on the number of prison beds. The Department of Juvenile Justice, however, may incur additional costs for cases resolved in the juvenile system that were previously subject to mandatory direct file.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative impact on the number of jail beds by keeping more children in the juvenile system.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Repealed all provisions for mandatory direct file.
- Added a requirement for an evidentiary hearing after the state transfers case to adult court by discretionary direct file to determine whether it is necessary for the protection of the community to prosecute the child as an adult.
- Established criteria for a court to consider at an evidentiary hearing for direct file review.
- Prohibited holding a child in an adult jail until a court determines that it is necessary for the protection of the community that the child be prosecuted as an adult.

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