

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 6051 Mandatory Direct File  
**SPONSOR(S):** Sirois  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	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 or court may and sometimes must transfer a child to adult court. The state is required to transfer a child to adult court by direct filing an information when the child:

- Was 16 or 17 when he or she committed:
  - A violent offense and has previously been adjudicated for an enumerated offense, including aggravated battery or robbery;
  - A forcible felony, such as robbery or burglary, and has previously been adjudicated 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;
  - A 10/20/Life offense, meaning the child used or possessed a firearm while committing a violent felony or drug trafficking; or
- The 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.

HB 6051 repeals all mandatory direct file provisions. Under the bill, a state attorney may direct file an information against a child meeting criteria for discretionary direct file; however, there are no requirements for the state to direct file a child.

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,<sup>1</sup> probationary sentence, or be committed to one of the Department of Juvenile Justice's (DJJ) commitment programs.<sup>2</sup> 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;<sup>3</sup>
- Juveniles are not subject to monetary bail;<sup>4</sup> and
- Probation may only last until age 19, and commitment until age 21.<sup>5</sup>

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.<sup>6</sup> Expunction of an adult criminal record, on the other hand, has much more stringent requirements.<sup>7</sup>

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;<sup>8</sup>
- Direct file, in which the state attorney files an information to transfer the child;<sup>9</sup> or
- Indictment, in which the grand jury charges the child by indictment for a capital offense or offense punishable by life in prison.<sup>10</sup>

Direct file accounts for 98 percent of juvenile transfers to adult court.<sup>11</sup> 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.<sup>12</sup>

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<sup>1</sup> Ss. 985.12, 985.125, 985.15, 985.155, and 985.16, F.S.

<sup>2</sup> S. 985.433, F.S.

<sup>3</sup> S. 985.35, F.S.

<sup>4</sup> S. 985.245, F.S.

<sup>5</sup> S. 985.0301, F.S.

<sup>6</sup> S. 943.0515, F.S.

<sup>7</sup> S. 943.0585, F.S.

<sup>8</sup> S. 985.556, F.S.

<sup>9</sup> S. 985.557, F.S.

<sup>10</sup> S. 985.56, F.S.

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

<sup>12</sup> S. 985.556(4), F.S.

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

Transfer Method	Mandatory	Discretionary
<b>Judicial Waiver</b>	Child was 14 or older when he or she committed a violent crime and was previously adjudicated for an enumerated crime. <sup>13</sup>	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.	
<b>Direct File</b>	Child was 16 or 17 when he or she committed a violent offense and has previously been adjudicated for an enumerated offense. <sup>14</sup>	Child was 14 or 15 when he or she committed an enumerated offense. <sup>15</sup>
	Child was 16 or 17 when he or she committed a forcible felony <sup>16</sup> 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"> <li>• A felony offense; or</li> <li>• A misdemeanor, if the child has two prior adjudications or withheld adjudications, one of which is a felony.</li> </ul>
	Child was 16 or 17 when he or she committed an 10/20/Life <sup>17</sup> offense, meaning the child used or possessed a firearm in the commission of a violent felony or drug trafficking.	

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> "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.

<sup>17</sup> S. 775.087, F.S.

A child transferred to adult court is treated like an adult in most ways. With the exception of the death penalty and a life sentence without the possibility of parole,<sup>18</sup> 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.<sup>19</sup> The adult court procedural rules apply, including trial by jury.

Total adult court transfers decreased 62 percent since FY 2010-11.<sup>20</sup> 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.<sup>21</sup>

### Effect of Proposed Changes

HB 6051 repeals all mandatory direct file provisions. Under the bill, a state attorney may direct file an information against a child who qualifies for discretionary direct file by:

- Committing an enumerated offense as a 14 or 15 year old;
- Committing a felony as a 16 or 17 year old; or
- Committing a misdemeanor with certain prior offenses.

The bill does not change the judicial waiver or indictment transfer methods.

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. 985.565, F.S., relating to sentencing powers; procedures; alternatives for juveniles prosecuted as adults.

**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. DJJ, 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.

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

<sup>19</sup> S. 985.565, F.S.

<sup>20</sup> Department of Juvenile Justice, *supra*, at 17.

<sup>21</sup> 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).

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