

**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 876

INTRODUCER: Senator Powell

SUBJECT: Juvenile Justice

DATE: April 5, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Storch  | Jones          | CJ        | <b>Pre-meeting</b> |
| 2. |         |                | ACJ       |                    |
| 3. |         |                | AP        |                    |

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**I. Summary:**

SB 876 permits a child, or the child's defense counsel, who is transferred to adult court pursuant to indictment or direct file, to request a hearing to determine whether the child must remain in adult court.

The bill provides that the purpose of the hearing is for the court to determine whether it is necessary for the protection of the community that the child is prosecuted in adult court. The bill requires the judge to conduct the hearing within 30 days of the written request and consider a number of factors in making a determination as to whether the child's case should remain in adult court or be transferred back to juvenile court.

The fiscal impact of the bill is indeterminate at this time. However, the bill requires the judge to consider a number of factors at the hearing, including a recommendation by the Department of Juvenile Justice (DJJ). As a result, the DJJ may incur costs associated with such recommendations. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

**II. Present Situation:**

**Transfer of a Child to Adult Court**

There are three methods of transferring a child to adult court for prosecution: judicial waiver,<sup>1</sup> indictment by a grand jury, or direct filing an information.

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<sup>1</sup> Judicial waiver is the process in which a child or a state attorney may, or in some cases must, waive the jurisdiction of the juvenile courts and have the case transferred to adult court for prosecution. The three types of judicial waiver are voluntary, involuntary discretionary, and involuntary mandatory. See s. 985.556, F.S.

### ***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. If the child is found to have committed the offense punishable by death or by life imprisonment, the child must be sentenced as an adult and must be treated as an adult for any subsequent violations.<sup>2</sup>

### ***Direct File***

Direct file describes the process whereby a state attorney files an information charging a child in adult court. Pursuant to s. 985.557, F.S., direct file can be either discretionary or mandatory and is accomplished exclusively by the state attorney without requiring the court's approval. Direct file is the predominant transfer method to adult court, accounting for 96.2 percent (870 children) of the transfers in FY 2017-18.<sup>3</sup>

### **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 he or she 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;

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<sup>2</sup> Section 985.56, F.S.

<sup>3</sup> SB 1260 (2019) addresses mandatory direct file and therefore, is similar to SB 876. *See* Department of Juvenile Justice, *2019 Legislative Bill Analysis for SB 1260*, (March 13, 2019) (on file with the Senate Criminal Justice Committee).

- 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>4</sup>
- 16 or 17 years of age and is charged with any felony offense;<sup>5</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>6</sup>

If a child who has been transferred to adult court pursuant to discretionary direct file is found to have committed a violation of state law or a lesser included offense for which he or she was charged as part of the criminal episode, the court may sentence the child as an adult, pursuant to ch. 958, F.S., or as a juvenile.<sup>7</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:
  - Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;<sup>8</sup>
  - Is charged with a forcible felony<sup>9</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>10</sup> or
  - Is charged with committing or attempting to commit an offense listed in s. 775.087(2)1.a.-p., F.S.,<sup>11</sup> and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;<sup>12</sup> or

<sup>4</sup> Section 985.557(1)(a)1.-19., F.S.

<sup>5</sup> Section 985.557(1)(b), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 985.565(4)(a)2., F.S.

<sup>8</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>9</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>10</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>11</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 any other violation of s. 893.135(1), F.S. Section 775.087(2)(a)1.a.-p., F.S.

<sup>12</sup> The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

- 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.

If the state attorney is required to direct file a child, the court must impose adult sanctions. Any sentence imposing adult sanctions is presumed appropriate and the court is not required to specify findings or criteria as the basis for its decision to impose such sanctions.<sup>13</sup>

### III. Effect of Proposed Changes:

Current law does not permit the court to review an indictment or a decision made by a state attorney to direct file a child. The bill permits a child, or the child's defense counsel, who is transferred to adult court pursuant to an *indictment or direct file* to request, in writing, a hearing to determine whether the child must remain in adult court. The purpose of the hearing is to determine whether it is necessary for the community's protection that the child is prosecuted in adult court.

The bill requires the judge to conduct the hearing within 30 days of the filing of the request, excluding weekends and legal holidays, unless good cause is shown for a delay. The judge must consider all of the following:

- The DJJ's recommendation, through review and consideration of the recommendations of the DJJ's caseworker;
- 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 emotional health at the time of the offense; and
  - The effect, if any, of characteristics attributable to the child's youth on the child's judgment.
- The record and history of the child, including:
  - Prior contacts with the DJJ, the Department of Corrections (DOC), the Department of Children and Families, other law enforcement agencies, or the courts;
  - Prior periods of probation;
  - Prior adjudications that the child committed a delinquent act or violation of law, with greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving violence to persons;
  - Prior commitments to institutions of the DJJ, the DOC, or agencies under contract with either department;
  - Patterns of criminality or patterns of escalation;
  - History of trauma, abuse or neglect, foster care placements, failed adoption, fetal alcohol syndrome, exposure to controlled substances at birth, or below-average intellectual functioning;
  - Identification of the child as a student requiring exceptional student education or having previously received psychological services; and
  - Whether the child has previously been convicted and sentenced as an adult.

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<sup>13</sup> Section 985.565(4)(a)3. and 4., F.S.

- The nature of the alleged offense and the child’s participation, including:
  - Whether the offense is punishable by death or life imprisonment;
  - Whether the offense was against persons or property;
  - Whether the offense is alleged to have been committed in an aggressive, violent, or premeditated manner;
  - The extent of the child’s alleged participation in the offense; and
  - The effect, if any, of familial pressure or peer pressure on the child’s actions.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense:
  - By the use of procedures, services, and facilities currently available to the juvenile court; and
  - By the use or procedures, services, and facilities currently available to the adult court, including whether the lowest permissible sentence under the Criminal Punishment Code is a nonstate prison sanction.
- Cost-effective alternatives available to divert the child from the criminal justice and juvenile justice systems and offer rehabilitative services for the child;
- 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 for the community; and
- Whether the child’s best interests would be served by prosecuting the child in juvenile court.

The bill permits the judge to consider any reports, including pre-disposition reports, psycho-social assessments, individualized educational programs, developmental assessments, school records, abuse or neglect reports, home studies, protective investigations, or psychological or psychiatric evaluations, to assist him or her in reaching a decision of whether to keep the child in adult court. The bill provides the child, the child’s parents or legal guardians, the child’s defense counsel, and the state attorney with the right to examine such records and question the parties responsible for creating them at the hearing.

Unless the court finds by a preponderance of the evidence that consideration of the factors listed above support returning the child to juvenile court, the adult court will retain jurisdiction. The adult court must render an order including specific findings of fact and the reason for its decision. The order is reviewable on appeal pursuant to s. 985.534, F.S., and the Florida Rules of Appellate Procedure.

The bill is effective July 1, 2019.

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

- A. Municipality/County Mandates Restrictions:
  - None.
- B. Public Records/Open Meetings Issues:
  - None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate at this time. While the bill permits a child, or his or her defense counsel, upon being transferred to adult court, to request a hearing to determine whether the child must remain in adult court, it is unknown how many children will request such a hearing. However, hearings conducted pursuant to the bill will likely result in additional costs incurred by the courts.

In making a determination as to whether to keep the child's case in adult court or transfer the case back to juvenile court, the bill requires the judge to consider a recommendation made by the DJJ. Currently, the DJJ does not provide recommendations to the court until the sentencing hearing and only upon request by the judge for such a recommendation.<sup>14</sup> At that point, the recommendations are limited to whether the court should impose adult or juvenile sanctions. In FY 2017-18, 879 children who were transferred to adult court pursuant to direct file or indictment would have been eligible to request a hearing pursuant to the bill. The DJJ estimates a cost of \$585,650 to complete the recommendation required for consideration by the court.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

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<sup>14</sup> Section 985.565(3)(a), F.S.

<sup>15</sup> Department of Juvenile Justice, *2019 Legislative Bill Analysis for SB 876*, (February 19, 2019) (on file with the Senate Criminal Justice Committee).

**VII. Related Issues:**

Line 270 provides that the order rendered by the judge in adult court regarding whether the child should remain in adult court or return to juvenile court is reviewable on appeal pursuant to s. 985.534, F.S., which governs appeals in juvenile court. This section would not apply to an appeal in adult court.

Lines 222-23 provides, “whether the child has previously been convicted and sentenced as an adult” as a factor to be considered by a judge in determining whether the child’s case should remain in adult court or be transferred back to juvenile court. However, this factor is in direct conflict with ss. 985.56(4)(a) and 985.557(3)(a), F.S., which provide that a child who has been transferred to adult court for criminal prosecution, pursuant to indictment or direct file, respectively, and found to have committed the presenting offense or a lesser included offense must be treated as an adult for any subsequent violation of state law thereafter. The bill does not address this conflict and it is unclear if a child in this situation would be permitted to request a hearing pursuant to the bill.

Additionally, lines 244-46 state, “cost-effective alternatives available to divert the child from the criminal justice system and the juvenile justice system and offer rehabilitative services for the child,” as a factor to be considered by the judge in determining whether the child should remain in adult court or return to juvenile court. A decision to offer a child post-arrest diversion is at the discretion of the state attorney and is typically reserved for less severe offenses. Current law prescribes the use of indictment for felonies punishable by death or life imprisonment and the use of direct file for more severe offenses, either felonies or misdemeanors subsequent to felonies, or for 16- or 17-year-old offenders. Nonetheless, a consideration by the judge as to whether diversion options are available to the child may be inappropriate at the hearing created by the bill.

**VIII. Statutes Affected:**

This bill substantially amends section 985.557 of the Florida Statutes.

**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.