

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 303 Minimum Age for Arrest

SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Williams and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1452, CS/SB 626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 1 N, As CS	Frost	Hall
2) Judiciary Committee			

SUMMARY ANALYSIS

In September 2019, an Orlando school resource officer handcuffed six-year-old Kaia Rolle and took her into custody at the Lucious and Emma Nixon Academy after she reportedly had a temper tantrum at school and kicked a school staff member. According to Orlando Police Department officials, Kaia Rolle was one of two six-year-old children arrested by the same officer that day.

While many states do not require a minimum age for a juvenile arrest or prosecution, more than 20 states have instituted minimum age restrictions, ranging from age six up to age 12. In addition to the growing number of states enacting such age limitations, the United States Supreme Court has also considered neuroscience research when sentencing youth who commit crimes. The Court has found that juveniles have less impulse control, are more susceptible to peer influence, lack the same decision-making skills as adults, and are less likely to exhibit negative moral character, thus lowering the likelihood of recidivism and leading to better rehabilitative outcomes.

Under ch. 985, F.S., "child," "juvenile" or "youth" means any person under the age of 18 or any person alleged to have committed a violation of law before he or she turned 18. Chapter 985, F.S., authorizes a child to be taken into custody:

- Pursuant to a circuit court order;
- For a delinquent act or violation of law;
- By a law enforcement officer for failing to appear at a court hearing; or
- By a law enforcement officer who has probable cause to believe the child:
 - Is in violation of probation, supervised release, post commitment probation, or condition supervision;
 - Has absconded from nonresidential commitment; or
 - Has escaped from residential commitment.

While there are alternative options to taking a child into custody, such as issuing a notice to appear or a civil citation, Florida does not presently restrict the age at which a child may be taken into custody, charged with a violation of the law, or adjudicated delinquent. As such, under current law, unless a law enforcement officer chooses an alternative option, he or she may take a child of any age into custody.

CS/HB 303 creates "The Kaia Rolle Act" to prohibit a child from being taken into custody, arrested, charged, or adjudicated delinquent for a delinquent act or violation of law based on an act occurring before he or she is seven years of age, unless the act committed is a forcible felony.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In September 2019, an Orlando school resource officer handcuffed six-year-old Kaia Rolle and took her into custody at the Lucious and Emma Nixon Academy after she reportedly had a temper tantrum at school and kicked a school staff member. According to Orlando Police Department officials, Kaia Rolle was one of two six-year-old children arrested by the same officer that day.¹

While many states do not set a minimum age for juvenile arrest or prosecution, in recent years more than 20 states have instituted minimum age restrictions for juvenile court prosecution, ranging from age six up to age 12.² In addition to the growing number of states placing age limitations on juvenile prosecution, the United States Supreme Court has also considered neuroscience research when sentencing youth who commit crimes. The Court has found that juveniles have less impulse control, are more susceptible to peer influence, lack the same decision-making skills as adults, and are less likely to exhibit negative moral character, which lowers the likelihood of repeated offenses and results in better rehabilitative outcomes.³

Florida Department of Juvenile Justice

The Department of Juvenile Justice (DJJ) manages Florida's juvenile justice system, and the juvenile delinquency process is governed primarily by ch. 985, F.S. The circuit courts have exclusive original jurisdiction over juvenile delinquency proceedings.⁴ In addition to providing services to juveniles within the court system, DJJ also provides prevention services, including voluntary programs throughout the state designed to reduce juvenile crime and protect public safety by targeting high-risk juveniles and those exhibiting problem behaviors.⁵ DJJ indicates that in FY 2019-2020, 990 children under the age of seven were admitted to a prevention program.⁶

Under ch. 985, F.S., "child," "juvenile" or "youth" means any person under the age of 18 or any person alleged to have committed a violation of law before he or she turned 18.⁷ Florida law does not presently restrict the age at which a child, juvenile, or youth may be taken into custody, charged with a violation of the law, or adjudicated delinquent. As such, under current law, unless a law enforcement officer chooses an alternative option, he or she may take a child of any age into custody.

¹ Mihir Zaveri, *Body Camera Footage Shows Arrest by Orlando Police of 6-Year-Old at School*, New York Times, (Feb. 27, 2021) <https://www.nytimes.com/2020/02/27/us/orlando-6-year-old-arrested.html> (last visited Mar. 11, 2021).

² NJDC, *The Criminalization of Childhood*, (July 2019) <https://njdc.info/wp-content/uploads/Criminalization-of-Childhood-WEB.pdf> (last visited Mar. 11, 2021).

³ See *Roper v. Simmons*, 542 U.S. 551 (2005) (regarding the juvenile death penalty – The Court ruled that imposing the death penalty on a juvenile under age 18 violates the Eighth Amendment's prohibition against cruel and unusual punishment. The decision effectively banned the juvenile death penalty nationwide) and *Graham v. Florida*, 560 U.S. 48 (2010) (regarding life without parole for juveniles – The Court ruled that sentencing a juvenile to life without parole for committing a nonhomicide offense constituted cruel and unusual punishment). See also Morgan Tyler, *Understanding the Adolescent Brain and Legal Culpability*, The American Bar Association, (Aug. 1, 2015) https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/ (last visited Mar. 11, 2021).

⁴ S. 985.0301(1), F.S.

⁵ The Department of Juvenile Justice, *Prevention & Victim Services*, <http://www.djj.state.fl.us/services/prevention> (last visited Mar. 11, 2021).

⁶ Email from Rachel Moscoso, Legislative Affairs Director, RE: Agency Bill Analysis for SB 626, (Feb. 8, 2021) (noting that prevention services serve at-risk youth and the participation of the 990 children was not a result of a delinquent act or charge).

⁷ S. 985.03(7), F.S.

Alternatives to Taking a Child into Custody

Notice to Appear

When a juvenile is alleged to have committed a delinquent act, a law enforcement officer or authorized agent of DJJ may, in lieu of taking a child into custody or detaining a child, issue a notice to appear. If the child is taken into custody by a law enforcement officer who chooses to release him or her to a parent, responsible adult relative, or legal guardian, the officer may issue to the child a written notice to appear, unless the child:

- Fails or refuses to sufficiently identify himself or herself or provide required information;
- Refuses to sign the notice to appear;
- May pose an unreasonable risk of bodily injury to himself, herself, or others;
- Has no ties to the jurisdiction which are reasonably sufficient to ensure his or her appearance or there is a substantial risk the child will refuse to respond to the notice to appear;
- May be wanted in any jurisdiction; or
- Has previously failed to respond to a notice or a summons.⁸

Civil Citation

Under s. 985.12, F.S., each judicial circuit in the state must establish a civil citation or similar prearrest diversion program for misdemeanor juvenile offenses, designed to divert children committing less serious offenses away from the juvenile delinquency system when appropriate.⁹ Each circuit's program must specify which misdemeanor offenses qualify a juvenile for the program, the eligibility criteria for the program, the program's implementation and operation information, and the program's requirements, such as community service, counseling, or paying restitution.¹⁰ According to DJJ, as of October 2019, all but two counties have implemented a civil citation or similar diversion program,¹¹ and since 2011, over 76,000 eligible first-time juvenile offenders have been offered a pre-arrest civil citation to participate in a diversion program.¹²

Taking a Juvenile into Custody

"Taken into custody" means a child's immediate status when a person authorized by law takes temporary physical control over the child, pending his or her release, detention, placement, or other disposition.^{13, 14} Under s. 985.101, F.S., a child may be taken into custody:

- Pursuant to a circuit court order;
- For a delinquent act or violation of law;
- By a law enforcement officer for failing to appear at a court hearing; or
- By a law enforcement officer who has probable cause to believe the child:
 - Is in violation of probation, supervised release, post commitment probation, or condition supervision;
 - Has absconded from nonresidential commitment; or
 - Has escaped from residential commitment.

⁸ Fla. R. Juv. P. 8.045

⁹ See s. 985.12, F.S.

¹⁰ S. 985.12(2)(b), F.S.

¹¹ Bradford and Hardee counties have not established a program. Florida Department of Juvenile Justice, *Civil Citation Implementation by County as of October 2019*, (Oct. 2019) <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-implementation-map-10-2020.pdf?sfvrsn=4> (last visited Mar. 11, 2021).

¹² Florida Department of Juvenile Justice, Agency Analysis of SB 626, p. 2 (Feb. 8, 2021). See also Florida Department of Juvenile Justice, *Civil Citation and Similar Diversion Program Best Practices Guide*, (2020), <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-and-similar-diversion-program-best-practices-guide-2020.pdf?sfvrsn=2> (last visited Mar. 11, 2021) (indicating statewide use in fiscal year 2019-20 was 59 percent).

¹³ S. 985.03(48), F.S. In the juvenile justice system, youth are taken into custody, whereas adults are arrested. Florida Department of Juvenile Justice, *Juvenile Justice Process; Taken into Custody*, <http://www.djj.state.fl.us/youth-families/juvenile-justice-process> (last visited Mar. 11, 2021).

¹⁴ Taking a child into custody is considered an arrest only for the limited purpose of determining whether the act of taking the juvenile into custody or any evidence obtained at the same time is lawful. S. 985.101(4), F.S.

While Florida does not currently provide a minimum age under which a child, juvenile, or youth may not be taken into custody, charged with a violation of the law, or adjudicated delinquent, individual law enforcement agencies may have policies prescribing how an officer should handle situations involving younger juveniles, such as requiring supervisor permission prior to taking the child into custody.¹⁵

DJJ indicates that in FY 2019-20, two juveniles under the age of seven and 12,224 juveniles between the ages of seven and 14 were referred to DJJ, and among those 2,200 were admitted to secure detention. The most common offenses across all referrals included misdemeanor assault/battery (19 percent), burglary (14 percent), felony aggravated assault/battery (11 percent), and petit theft (five percent).¹⁶

Intake

Generally, when a child is alleged to have committed a delinquent act or violation of law and is taken into custody, he or she is transported to a juvenile assessment center (JAC) for intake screening to assess if a form of detention is needed and whether judicial handling is appropriate.¹⁷ “Intake” means the initial acceptance and screening by DJJ or JAC personnel of a complaint or a law enforcement report or probable cause affidavit of delinquency to determine the recommendation to be taken in the best interests of the child, the family, and the community. The screening, known as a Detention Risk Assessment Instrument (DRAI), is used to assess whether a youth should be held in secure detention or if he or she may be released back into the community— a decision primarily determined by whether he or she poses a risk to public safety, but with consideration of numerous factors, including whether a juvenile is under the age of 12.¹⁸

The intake process emphasizes diversion and using the least restrictive services available. As such, intake includes alternatives, such as:

- Disposing of the complaint, report, or probable cause affidavit without court or public agency action or judicial handling when appropriate;
- Referring the child to another public or private agency when appropriate; or
- DJJ recommending judicial handling of the case when appropriate and warranted.¹⁹

If DJJ determines detention is necessary, the child is transported to the nearest DJJ detention center or facility.²⁰ However, with some minor offenses, a child may be released to a parent or guardian.²¹

Detention

When a child is detained, a court must conduct a detention hearing within 24 hours to determine if there is probable cause that the child committed a delinquent act or violation of law and whether further detention is necessary.²² Unless the court finds that certain factors are met,²³ the child must be released. However, if a child meets the factors for continued detention, he or she may not be detained for longer than 21 days without an adjudicatory hearing, unless the court grants an extension for good cause.²⁴ Regardless of whether a child remains in detention or is released, the State Attorney determines whether to proceed judicially or non-judicially. If the State Attorney decides to proceed non-

¹⁵ Florida Department of Juvenile Justice, Agency Analysis of SB 626, p. 2 (Feb. 8, 2021).

¹⁶ *Id.*

¹⁷ In counties that do not have an assessment center, the law enforcement officer calls a DJJ “on-call screener” to assess the juvenile’s risk and determine if detention is necessary. Office of the State Court’s Administrator, *Florida’s Juvenile Delinquency Benchbook* (Nov. 2016), <https://www.flcourts.org/content/download/215962/1961718/DelinquencyBenchbook.pdf> (last visited Mar. 11, 2021).

¹⁸ Florida Department of Juvenile Justice, *What is the DRAI?*, <http://www.djj.state.fl.us/research/latest-initiatives/detention-risk-assessment-instrument/what-is-the-drai> (last visited Mar. 11, 2021).

¹⁹ S. 985.03(24), F.S.

²⁰ “Detention center or facility” means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents is not considered a detention center or facility. S. 985.03(19), F.S.

²¹ S. 985.03(18)(b), F.S.

²² S. 985.26, F.S. This type of hearing is similar to a first appearance in an adult criminal case.

²³ See s. 985.255(1), F.S.

²⁴ S. 985.26(2), F.S.

judicially, a child may be placed into a diversionary program. If the child successfully completes the diversionary program, the delinquency case is dismissed.

Disposition

If the State Attorney proceeds judicially, or a child fails to complete a diversion program he or she entered non-judicially, a delinquency petition is filed and a child must enter a plea of not guilty, guilty, or nolo contendere at an arraignment.²⁵ If a child enters a plea of guilty or nolo contendere to the alleged activity, the case proceeds directly to a disposition hearing. If a child enters a plea of not guilty, the case proceeds instead to an adjudicatory hearing, similar to a criminal trial but determined by a judge rather than a jury. If the judge finds, based on the evidence presented during the adjudicatory hearing, that the child committed a delinquent act, the judge determines whether to withhold adjudication or adjudicate the child delinquent.²⁶ Regardless of adjudication, the child's case then proceeds to a disposition hearing, where the court may order residential commitment at a specified restrictive level,²⁷ a probation program including community-based sanctions²⁸ or rehabilitative components, or both.²⁹

Effect of Proposed Changes

CS/HB 303 creates "The Kaia Rolle Act" to prohibit a child from being taken into custody, arrested, charged, or adjudicated delinquent for a delinquent act or violation of law based on an act occurring before he or she is seven years of age, unless the act committed is a forcible felony.

A forcible felony includes: 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.³⁰

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Creates s. 985.031, F.S., relating to age limitation; exception.

Section 2: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

²⁵ A child of any age who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the juvenile court unless and until an indictment on the charge is returned by a grand jury. When such indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as an adult on the offense that is punishable by death or life imprisonment and all other felonies or misdemeanors charged in the indictment. S. 985.56, F.S.

²⁶ S. 985.35(4), F.S.

²⁷ Residential programs include minimum-risk nonresidential, nonsecure residential, high-risk residential, or maximum risk residential. S. 985.03(44), F.S.

²⁸ Community-based sanctions may include, but are not limited to: participation in substance abuse treatment; participation in a day-treatment program; restitution in money or in kind; a curfew; revocation or suspension of the child's driver license; community service; or appropriate educational programs. S. 985.435(3), F.S.

²⁹ S. 985.433, F.S.

³⁰ S. 776.08, F.S.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DJJ indicates that while the bill may divert children under the age of seven from the juvenile delinquency system, it is unclear what, if any, services such children may receive in lieu of those provided by DJJ.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2021, the Criminal Justice and Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from HB 303 in the following ways:

- Prohibited a child from being taken into custody, charged, or adjudicated delinquent based on acts which occurred before he or she reached 7 years of age, rather than solely prohibiting the arrest of a child 10 years of age or under.
- Provided an exception to the age limitation if the child commits a forcible felony.

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