

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 936

INTRODUCER: Senator Powell

SUBJECT: Juvenile Justice

DATE: January 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 936 eliminates mandatory direct file of a child and changes the discretionary prosecution of children as adults by:

- Modifying the age in which a child can be prosecuted as an adult from 14 or 15 to 16 or 17 and limits the specified offenses that qualify a child to be prosecuted as an adult.
- Prohibiting the prosecution of a 16 or 17 year old as an adult for the offense of grand theft in violation of s. 812.014(2)(a), F.S.
- Providing a child transferred to adult court the opportunity to request a hearing before the court to determine if his or her case should remain in adult court.

The bill requires the court to include certain information in the disposition order or the judgment and sentence order at the time the court adjudicates a case eligible for transfer to adult court.

The bill removes involuntary mandatory waiver from the judicial waiver process and provides that only a child of 14 years of age or older can be subject to an indictment by a grand jury.

The bill prohibits a child who is incompetent or has a pending competency hearing from being transferred to adult court until his or her competency is restored.

The bill provides that a child transferred to adult court may be sentenced as an adult, a youthful offender under ch. 958, F.S., or a juvenile. The bill also modifies and adds criteria that the court must consider when determining what type of sanctions are appropriate.

The bill requires the Department of Juvenile Justice (DJJ) to collect and annually report data to the Governor, President of the Senate, and Speaker of the House of Representatives regarding children who qualify for prosecution as adults. The DJJ must work with the Office of Program Policy Analysis and Government Accountability (OPPAGA) to aggregate the data and create a report.

The bill prohibits children convicted as adults from losing their civil rights.

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. Section 985.556, F.S., provides three types of judicial waivers:

- Voluntary Waiver – the child requests to have his or her case transferred to adult court;¹
- 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;² 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 felony³ 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.⁴

If the state attorney files a motion to transfer a child to adult court, the court must hold a hearing to determine whether the child should be transferred.⁵ The court must consider the following factors to determine whether transfer is appropriate:

- The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child;
- Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the alleged offense was against persons or against property;
- The probable cause found in the report, affidavit, or complaint;
- The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults;
- The sophistication and maturity of the child;
- The record and previous history of the child, including:

¹ Section 985.556(1), F.S.

² Section 985.556(2), F.S.

³ 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.

⁴ Section 985.556(3), F.S.

⁵ Section 985.556(4), F.S.

- Previous contacts with the DJJ, Department of Corrections (DOC), former Department of Health and Rehabilitative Services (HRS), Department of Children and Families (DCF), other law enforcement agencies, and court;
- Prior periods of probation;
- Prior adjudications that the child committed a delinquent act or violation of law; and
- Prior commitments to institutions.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child.⁶

The court must provide an order specifying the reasons for its decision to impose adult sanctions.⁷

If a child is transferred to adult court by a voluntary waiver or involuntary discretionary waiver and is found to have committed the offense or a lesser included offense, the court may sentence the child as an adult, a youthful offender, or a juvenile.⁸ If the transfer was by an involuntary mandatory waiver, the court must impose adult sanctions.⁹

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.¹⁰

If the child is found to have committed the offense punishable by death or life imprisonment, the court must sentence the child as an adult.¹¹ If the child is instead found to have committed a lesser included offense or any other offense for which he or she was indicted as part of the criminal episode, the court may sentence the child as an adult, a youthful offender, or a juvenile.¹²

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 either be discretionary or mandatory. Direct file is the predominant transfer method to adult court accounting for 98 percent of the transfers each year.¹³

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain juvenile cases when he or she believes the offense requires that adult sanctions be

⁶ Section 985.556(4)(c), F.S.

⁷ Section 985.556(4)(e), F.S.

⁸ Section 985.565(4)(a)2.a.-c., F.S.

⁹ Section 985.565(4)(a)3., F.S.

¹⁰ Section 985.56(1), F.S.

¹¹ Section 985.565(4)(a)1., F.S.

¹² Section 985.565(4)(a)1.a.-c., F.S.

¹³ SB 936 (2018) is similar to SB 192 (2017). Department of Juvenile Justice, *2017 Bill Analysis for CS/SB 192 (2017)*, (March 6, 2017) (on file with the Senate Criminal Justice Committee).

considered or imposed. Specifically, the state attorney may file an information (direct file a child) in adult court 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;
 - 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.¹⁴
- 16 or 17 years of age and is charged with any felony offense;¹⁵ 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.¹⁶

If a child transferred to adult court by discretionary direct file is found to have committed the offense or a lesser included offense, the court may sentence the child as an adult, a youthful offender, or a juvenile.¹⁷

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:

¹⁴ Section 985.557(1)(a)1.-19., F.S.

¹⁵ Section 985.557(1)(b), F.S.

¹⁶ *Id.*

¹⁷ Sections 985.565(4)(a)2. and (b), F.S.

- Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;¹⁸
- Is charged with a forcible felony¹⁹ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;²⁰ or
- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)1.a.-p., F.S.,²¹ and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;²² 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.

The court has the discretion to sentence a child transferred to adult court by mandatory direct file as an adult, a youthful offender, or a juvenile if:

- The child was 16 or 17 years old at the time of the offense, the charged offense is listed in s. 775.087(2)(a)1.a.-p., F.S., and during the commission of the offense the child actually possessed or discharged a firearm or destructive device; or
- The charged offense 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.²³

However, the court must impose adult sanctions for a child transferred to adult court by mandatory direct file who was 16 or 17 years old at the time of the offense and:

- Is charged with committing a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony; or
- Is charged with committing a forcible felony and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other.²⁴

¹⁸ 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.

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

²³ Section 985.565(4)(a)2., F.S.

²⁴ Section 985.565(4)(a)3., F.S.

Imposing Adult or Juvenile Sanctions

Judges often have discretion to impose adult or juvenile sanctions when a child is transferred to adult court and found to have committed an offense. In determining whether adult or juvenile sanctions are appropriate, the judge must consider the following factors:

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;²⁵
- The sophistication and maturity of the offender;
- The record and previous history of the offender, including:
 - Previous contacts with the DOC, DJJ, former HRS, DCF, law enforcement agencies, and the courts;
 - Prior periods of probation;
 - Prior adjudications that the offender committed a delinquent act or violation of law as a child; and
 - Prior commitments to the DJJ, former HRS, DCF, or other facilities or institutions;
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to the DJJ's services and facilities;
- Whether the DJJ has appropriate programs, facilities, and services immediately available; and
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than juvenile sanctions.²⁶

If juvenile sanctions are imposed, the court must adjudge the child to have committed a delinquent act²⁷ and may:

- Place the child on probation with the DJJ for an indeterminate period of time until he or she reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the child to the DJJ for treatment in an appropriate program for an indeterminate period of time until he or she reaches 21 years of age or sooner if discharged by the DJJ;²⁸ or
- Order any of the following if the court determines not to impose youthful offender or adult sanctions:
 - Probation and postcommitment probation or community service under s. 985.435, F.S.;
 - Restitution under s. 985.437, F.S.;
 - Consequences for violation of probation or postcommitment probation under s. 985.439, F.S.;
 - Commitment under s. 985.441, F.S.;
 - Work program liability and remuneration under s. 985.45, F.S.; and

²⁵ Greater weight is given to offenses against persons, especially if personal injury resulted.

²⁶ Section 985.565(1)(b), F.S.

²⁷ Section 985.565(4)(b), F.S. Adjudication of delinquency is not deemed a conviction, nor does it operate to impose any of the civil disabilities ordinarily resulting from a conviction.

²⁸ The DJJ must notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the DJJ's notice shall be considered approval for discharge.

- Other dispositional issues under s. 985.455, F.S.²⁹

If the court imposes a juvenile sanction and the DJJ determines that the sanction is unsuitable for the child, the DJJ must return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions.³⁰

Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions.³¹

The court may not sentence a child to a combination of adult and juvenile sanctions.³²

Effect of Transferring a Child to Adult Court

If a child transferred to adult court is found to have committed the offense or a lesser included offense, the child must have any subsequent violations of law handled in adult court.³³ The court must also immediately transfer and certify all unresolved³⁴ felony cases pertaining to the child to adult court for prosecution.³⁵

If the child is acquitted of all charged offenses (or lesser included offenses) contained in the originally direct filed case, all felony cases transferred to adult court as a result of the originally transferred case must be subject to juvenile sanctions.³⁶

Detention Transfer and Release

The court must order the delivery of a child to a jail or other facilities intended or used for the detention of adults in the following circumstances:

- When the child has been transferred or indicted for prosecution as an adult;³⁷ or
- When a child taken into custody in this state is wanted by another jurisdiction for prosecution as an adult.³⁸

²⁹ Section 985.565(4)(b)1.-3., F.S.

³⁰ Section 985.565(4)(b), F.S.

³¹ Section 985.565(4)(a)4., F.S.

³² Section 985.565(4)(b), F.S.

³³ Sections 985.556(5), 985.56(4)(a), 985.557(3)(a), F.S. This provision does not apply if the adult court imposes juvenile sanctions under s. 985.565, F.S.

³⁴ Unresolved cases include those which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not yet been made. *See* s. 985.557(3)(b), F.S.

³⁵ Sections 985.556(5), 985.56(4), and 985.557(3), F.S.

³⁶ *Id.*

³⁷ The court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for prosecution pursuant so either ss. 985.556 or 985.557, F.S., to be detained or held in a jail or other facility intended or used for the detention of adults; however, such child may be held temporarily in a detention facility. Section 985.265(5)(a), F.S.

³⁸ Section 985.265(5), F.S.

Suspension of Civil Rights

The civil rights of a person are suspended in Florida upon conviction of a felony.³⁹ These rights are suspended until they are restored by a full pardon, conditional pardon, or restoration of civil rights pursuant to Art. IV, s. 8 of the State Constitution.⁴⁰

The power to pardon and restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members.⁴¹ Section 940.05, F.S., provides that a person who has been convicted of a felony may be entitled to the restoration of all the rights of citizenship enjoyed by him or her before conviction if the person has:

- Received a full pardon from the Board of Executive Clemency;
- Served the maximum term of the sentence imposed upon him or her; or
- Been granted his or her final release by the Florida Commission on Offender Review.⁴²

III. Effect of Proposed Changes:

Judicial Waiver (Section 2, amending s. 985.556, F.S.)

The bill eliminates involuntary mandatory waiver from the judicial waiver process. Related to hearings on transfer requests, the bill also repeals the factor which required the court to consider the desirability of the trial and disposition of the case be handled in the same court as the child's codefendants. Furthermore, the bill adds a factor to require the court to consider a child's mental development in determining whether a child should be transferred to adult court.

Indictment of a Juvenile (Section 4, amending s. 985.56, F.S.)

The bill specifies that only a child 14 years of age or older can be subject to an indictment by a grand jury.

The bill prohibits a child eligible for indictment from being transferred to adult court until his or her competency is restored if he or she has:

- A pending competency hearing in juvenile court; or
- Been previously found to be incompetent and has not been restored to competency by a court.

The bill provides that a pending competency hearing or a finding of incompetency tolls the time limits provided in s. 985.56(2), F.S.

³⁹ A person's loss of certain civil rights as a result of a felony conviction are specified both in the Florida Constitution and Florida Statutes. The Florida Constitution specifies the loss of the right to vote and the right to hold public office. *See* Article IV, s. 4, Fla. Const. Section 40.013, F.S., specifies the loss of the right to serve on a jury and ss. 790.06(2)(d) and (k) and 790.23, F.S., specify the loss of the right to possess a firearm.

⁴⁰ Section 944.292(1), F.S.

⁴¹ Article IV, s. 8(a), Fla. Const. *See also* s. 940.01, F.S.

⁴² Section 940.05, F.S.

Prosecuting Children as Adults (Direct File) (Section 3, amending s. 985.557, F.S.)

The bill eliminates mandatory direct file and modifies the discretionary prosecution of children as adults (discretionary direct file). The bill changes the age in which a child can be prosecuted as an adult from 14 or 15 to 16 or 17.

The bill narrows the discretion afforded to a state attorney in prosecuting a child as an adult, providing that a 16 or 17-year-old child may only be prosecuted as an adult when he or she commits one of the qualifying offenses enumerated in s. 985.557(1)(a), F.S. The bill removes grand theft in violation of s. 812.014(2)(a), F.S., from the list of qualifying offenses.

The bill requires the DOC to make every reasonable effort to ensure that any child between the ages of 14 and 18 years old who is convicted and sentenced be completely separated from adult offenders in the facility.

The bill requires the court, beginning October 1, 2018, with the assistance of the DJJ, prosecutor, and defense counsel, to include the following information in the disposition order or the judgement and sentence order at the time the court adjudicates a case eligible for transfer to adult court:

- Whether the case was adjudicated in juvenile or adult court;
- The length of time the child spent in a detention facility or jail awaiting disposition;
- If the case was adjudicated in juvenile court:
 - Whether the child had to waive statutory limits on secure detention in order to avoid being prosecuted as an adult and, if available, the amount of time the child who waived secure detention limits actually spent in secure detention;
 - Whether the child waived the right to trial in exchange for the case remaining in juvenile court;
 - If the decision not to transfer to adult court resulted in a plea agreement, the details of the plea agreement, including previous plea offers made by the state but not accepted by the child, and any conditions placed on the plea offer;
 - Whether any discovery was conducted on the case before the plea; and
 - Whether the judge sentenced the child to a disposition other than what the prosecutor was offering in exchange for the child not being prosecuted as an adult.
- If the case was adjudicated in adult court:
 - Whether any discovery was conducted on the case after the child's transfer to adult court;
 - Whether the sentence was the result of a plea agreement that did not involve the judge;
 - Whether the sentence was the result of a plea agreement that did involve the judge; and
 - Whether the sentence was the result of a trial.

The bill provides that the chief judge in each judicial circuit must collect the information specified above for all cases disposed of in the previous month and submit that information to the DJJ on or before the 15th of each month.

Fitness Hearings before a Judge (Section 3, amending s. 985.557, F.S.)

A child transferred to adult court by discretionary prosecution may request a hearing before the court to determine whether public safety would be best served by keeping the child in adult court. In making this determination, the court must consider:

- The seriousness of the offense;
- The extent of the child's alleged participation or role in the offense;
- The sophistication, maturity, and mental development of the child;
- Any prior adjudications or adjudications withheld of the child; and
- Any other consideration set forth in s. 985.556(3)(c), F.S.

Based on these considerations, the adult court may transfer the case back to juvenile court.

Transfer Prohibitions (Section 3, amending s. 985.557, F.S.)

A child eligible for discretionary prosecution as an adult who has been previously found to be incompetent cannot be transferred to adult court for criminal prosecution until his or her competency has been restored.

Data Collection Relating to Prosecuting Children as Adults (Section 3, amending s. 985.557, F.S.)

The bill requires the DJJ, beginning January 1, 2019, to collect data relating to children who qualify to be prosecuted as adults. This data includes, but is not limited to:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence and offense;
- Prior adjudications or adjudications withheld;
- Prior periods of probation, including any violations of probation;
- Previous contact with law enforcement agencies or the court which resulted in a civil citation, arrest, or other charge being filed with the state;
- Initial charges;
- Charges at disposition;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel or waived counsel;
- The child's risk assessment instrument score;
- The child's medical, mental health, substance abuse, or trauma history;
- The child's history of mental impairment or disability-related accommodations;
- The child's history of abuse or neglect;
- The child's history of foster care placements, including the number of prior placements;
- Whether the child has below-average intellectual functioning;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a child-in-need-of-services or families-in-need-of-services petition or a dependency petition;
- Whether the child was transferred for criminal prosecution as an adult;

- The case resolution in juvenile court;
- The case resolution in adult court; and
- Information generated by the state attorney's office in each judicial circuit under s. 985.557(1)(c)1., F.S.

Beginning January 1, 2019, the DJJ must also collect data relating to children transferred for prosecution as an adult. This data includes, but is not limited to:

- Disposition data, including, but not limited to, adult sanctions, juvenile sanctions, or diversions received and, if sentenced to prison, the length of the prison sentence or the length of the enhanced sentence; and
- Incompetence to proceed in juvenile court.

The DJJ must work with OPPAGA to generate a report analyzing the aggregated data listed above for every juvenile case transferred between July 1, 2017, and June 30, 2018. Such report must be provided to the Governor, President of the Senate, and Speaker of the House by January 31, 2019.

The DJJ must work with OPPAGA analyzing the aggregated data listed above on an annual basis. Such report must be provided annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 31 of the following calendar year.

Imposing Adult or Juvenile Sanctions (Section 5, amending s. 985.565, F.S.)

The bill adds additional criteria and modifies existing criteria that the court must consider when determining whether to impose adult or juvenile sanctions.

The bill adds the following criteria that courts must consider:

- The extent of the child's participation in the offense.
- The effects, if any, of familial or peer pressure on the child's actions.
- Whether the DOC has appropriate programs, facilities, and services immediately available.

The bill modifies the following existing criteria that courts must consider:

- The sophistication, maturity, and mental development of the child, including:
 - The child's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense;
 - The child's background, including his or her family, home, and community environment;
 - The effect, if any, of immaturity, impetuosity, or failure to appreciate the risks and consequences of the offense on the child's participation in the offense; and
 - The effect, if any, of characteristics attributable to the child's age on the child's judgment.
- The record and previous history of the child, including:
 - Previous contacts with the DOC, DJJ, former HRS, or DCF, and the adequacy and appropriateness of the services provided by the DJJ to address the child's needs;

- Prior commitments to the DJJ, former HRS, DCF, or other facilities or institutions and the adequacy and appropriateness of the services provided by such entity to address the child's needs;
- Previous contacts with law enforcement agencies and the courts;
- History of abuse, abandonment, neglect, or foster care placements;
- Identification of the child as having a disability; and
- History of mental health services or treatment.

The bill provides that a child transferred pursuant to indictment, information (discretionary prosecution), or waiver of juvenile court jurisdiction and found to have committed a violation of law or a lesser included offense may be sentenced:

- As an adult;
- As a youthful offender under ch. 958, F.S.; or
- As a juvenile.

Detention Transfer and Release (Section 8, amending s. 985.265, F.S.)

The bill provides that the court is authorized, but not required, to order a child to be delivered to a jail or other facility intended or used for the detention of adults in certain circumstances.

Suspension of Civil Rights (Section 1, amending s. 944.292, F.S.)

The bill provides that a child convicted as an adult will not be subject to the suspension of his or her civil rights.

Other (Sections 6, 7, 8, 9, 10)

The bill also amends ss. 985.03 and 985.15, F.S., to reflect changes made by the bill and reenacts ss. 985.26(2)(c) and 985.514(3), 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.

D. Other Constitutional Issues:

The bill provides that a child convicted as an adult will not be subject to the suspension of his or her civil rights. Florida's Constitution and Florida Statutes provide that a person's civil rights are suspended upon conviction of a felony.⁴³ These rights are suspended until they are restored by a full pardon, conditional pardon, or restoration of civil rights pursuant to Art. IV, s. 8 of the State Constitution.⁴⁴

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, thus increasing the DJJ's population. The Criminal Justice Impact Conference has not provided an estimate of the bill's impact. However, to the extent that these changes occur, the bill 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 DJJ.

The DJJ and the DOC have not yet submitted analyses for this bill. The DJJ's conservative estimate for a similar bill in 2017 (CS/SB 192) was that the bill would avert approximately 315 youth from direct file. Whereas, this bill further limits the number of children who could be prosecuted as an adult, which would lead to more children remaining under the supervision of the DJJ. The DJJ estimated the fiscal impact of the bill to be a minimum of \$19.02 million in the first year and \$24.70 million annually in subsequent years.⁴⁵

The fiscal impact estimate did not take into consideration the need to procure additional programs and to build or procure facilities to accommodate this additional population. The DJJ's current operating capacity is just over 2,100 residential beds and has a utilization rate of 98 percent. If sufficient beds were not made available, youth awaiting placement to a residential program would be housed in secure detention or in their home communities, creating a significant backlog of youth awaiting placement.⁴⁶

⁴³ See Article IV, s. 4, Fla. Const. and ss. 790.06(2)(d) and (k), 790.23, and 944.292, F.S.

⁴⁴ Section 944.292(1), F.S.

⁴⁵ Department of Juvenile Justice, *2017 Bill Analysis for CS/SB 192*, (March 6, 2017) (on file with the Senate Committee on Criminal Justice).

⁴⁶ *Id.*

Alternatively, the DJJ would require funding in addition to the \$24.70 million addressed previously to procure additional programs and to build or procure facilities to house these youths. Construction costs could exceed \$65 million to provide bed space sufficient for the high-risk and max-risk residential programs. The per diem rates used were based on per diems for programs that utilize the DJJ (state-owned) facilities. Per Diem rates for programs that do not utilize state-owned facilities are potentially higher.⁴⁷

Additionally, the bill requires the DJJ to collect data for review and analysis which would require modification of the Juvenile Justice Information System at an estimated cost of \$93,600. The time necessary for analysis, design, testing, and implementation could take up to six months to complete.⁴⁸

Tasks assigned to OPPAGA in the proposed legislation may be accomplished with existing resources.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 944.292, 985.03, 985.15, 985.265, 985.556, 985.557, 985.56, and 985.565

The bill reenacts the following sections of the Florida Statutes: 985.26 and 985.514.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴⁷ Department of Juvenile Justice, *2017 Bill Analysis for CS/SB 192*, (March 6, 2017) (on file with the Senate Committee on Criminal Justice).

⁴⁸ *Id.*

⁴⁹ Office of Program Policy Analysis and Government Accountability, *2018 Bill Analysis for SB 936*, (December 6, 2017) (on file with the Senate Committee on Criminal Justice).