

**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 314

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Juvenile Justice

DATE: October 30, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Favorable</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 314 substantially amends two of Florida's current methods for transferring a juvenile to adult court for criminal prosecution. These transfer methods are indictment and direct file. It also amends current provisions requiring the court to impose juvenile and adult sanctions upon juveniles transferred to adult court.

The bill amends the indictment transfer statute, s. 985.56, F.S., by limiting the state attorney's authority to convene a grand jury to cases in which the juvenile is 14 years of age or older (currently available for juveniles of any age who are charged with an offense punishable by death or life imprisonment).

The bill also amends the direct file transfer statute, s. 985.557, F.S., by eliminating the mandatory direct file system and modifying the discretionary direct file system to a two-tiered system based on the juvenile's age and enumerated offense.

- In the first tier, the state attorney may direct file a juvenile who is 16 years of age or older and less than 18 years at the time of the alleged offense if he or she committed an enumerated offense.
- In the second tier, the state attorney may direct file a juvenile who is 14 or 15 years of age at the time of the offense if he or she committed murder, manslaughter, or sexual battery.

The bill prohibits a juvenile from being transferred to adult court by indictment or direct file if the juvenile:

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

The bill provides that a juvenile transferred to adult court by direct file who is found to have committed a violation of law or a lesser included offense may be sentenced as an adult, a

youthful offender, or a juvenile. It removes, modifies, and adds criteria that the court must consider when determining whether these sanctions are appropriate. The court must include specific findings of fact and reasons for its decision to impose adult sanctions under the bill.

The bill provides a reverse waiver process that allows a juvenile who is transferred to adult court by direct file to request a court hearing to determine whether he or she will remain in adult court. The adult court, after considering certain factors, can waive the case back to juvenile court.

Finally, the bill requires the Department of Juvenile Justice (DJJ) to collect and annually report direct file data to the Legislature.

This bill has an effective date of July 1, 2016.

## II. Present Situation:

### Transferring Juveniles to Adult Court

There are three methods of transferring a juvenile to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing of an information by a prosecutor.

#### *Judicial Waiver of Juvenile Court Jurisdiction*

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. Section 985.556, F.S., creates three types of judicial waivers:

- Voluntary Waiver - the juvenile requests to have his or her case transferred to adult court;<sup>1</sup>
- Involuntary Discretionary Waiver - the state attorney may file a motion requesting the court to transfer any case where the juvenile is 14 years of age or older;<sup>2</sup> and
- Involuntary Mandatory Waiver - the state attorney must request the transfer of a juvenile 14 years of age or older if the juvenile:
  - Has been previously adjudicated delinquent for an enumerated felony<sup>3</sup> and the juvenile 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 the juvenile was previously adjudicated delinquent or had adjudication withheld for three felony offenses, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person.<sup>4</sup>

If the state attorney files a motion to transfer a juvenile to adult court, the court must hold a hearing to determine whether the juvenile should be transferred.<sup>5</sup> The court must consider a variety of statutorily articulated factors when determining whether transfer is appropriate (including, in part, the seriousness of the offense, the sophistication and maturity of the juvenile, the record and previous history of the juvenile, and whether the alleged offense was committed

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<sup>1</sup> Section 985.556(1), F.S.

<sup>2</sup> Section 985.556(2), F.S.

<sup>3</sup> The enumerated felonies listed in this subsection include 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.

<sup>4</sup> Section 985.556(3), F.S.

<sup>5</sup> Section 985.556(4), F.S.

in an aggressive, violent, premeditated, or willful manner).<sup>6</sup> The court must also provide an order specifying the reasons for its decision to impose adult sanctions.<sup>7</sup>

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

### ***Indictment by Grand Jury***

Section 985.56, F.S., specifies that a juvenile 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 is returned on the charge by a grand jury. If the grand jury returns an indictment on the charge, the juvenile must be transferred to adult court and be handled as an adult in every respect.<sup>10</sup>

If the juvenile is found to have committed the offense punishable by death or life imprisonment, the court must sentence the juvenile as an adult.<sup>11</sup> If the juvenile is found not to have committed the indictable offense, but is 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 juvenile as an adult, as a youthful offender, or as a juvenile.<sup>12</sup>

### ***Direct Filing an Information by the State Attorney***

Direct file transfer under s. 985.557, F.S., can either be discretionary or mandatory. Direct file is the predominant transfer method, according to the DJJ.<sup>13</sup>

### ***Discretionary Direct File***

Section 985.557(1), F.S., allows the state attorney to file an information<sup>14</sup> on certain juvenile cases when, in the state attorney's judgment and discretion, the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may file an information in adult court when a juvenile is:

- 14 or 15 years old and charged with one of the following felony offenses:

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<sup>6</sup> Section 985.556(4)(c), F.S.

<sup>7</sup> Section 985.556(4)(e), F.S.

<sup>8</sup> Section 985.565(4)(a)2., F.S.

<sup>9</sup> Section 985.565(4)(a)3., F.S.

<sup>10</sup> Section 985.56(1), F.S. The charge punishable by death or life imprisonment must be transferred, as well as all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or life imprisonment.

<sup>11</sup> Section 985.565(4)(a)1., F.S.

<sup>12</sup> *Id.*

<sup>13</sup> In Fiscal Year 2014-2015, 1,282 juveniles were transferred to the adult system. Approximately 98% of those were transferred by direct file. Department of Juvenile Justice, *2015 Bill Analysis for SB 314 (2015)* (on file with the Senate Criminal Justice Committee).

<sup>14</sup> An "information" is the charging document that initiates prosecution. Section 985.557(4), F.S., provides that any information filed pursuant to the direct file statute may include all charges that are based on the same act, criminal episode, or transaction as the primary 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; specified burglary of a dwelling or structure; burglary with an assault or battery; 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; possessing or discharging any weapon or firearm on school property; home invasion robbery; carjacking; grand theft of a motor vehicle; or grand theft of a motor vehicle valued at \$20,000 or more if the child has a previous adjudication for grand theft of a motor vehicle.<sup>15</sup>
- 16 or 17 years old and charged with any felony offense;<sup>16</sup> or
- 16 or 17 years old and charged with any misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which is a felony.<sup>17</sup>

If a juvenile 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 juvenile as an adult, as a youthful offender, or as a juvenile.<sup>18</sup>

#### Mandatory Direct File

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the juvenile is:

- 16 or 17 years old at the time of the alleged offense and:
  - Has been previously adjudicated delinquent for an enumerated felony<sup>19</sup> and the juvenile is currently charged with a second or subsequent violent crime against a person;
  - Is currently charged with a forcible felony<sup>20</sup> and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other;<sup>21</sup> or

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<sup>15</sup> Section 985.557(1)(a), F.S.

<sup>16</sup> Section 985.557(1)(b), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 985.565(4)(a)2. and (b), F.S.

<sup>19</sup> The enumerated felonies listed in this subsection include the 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.

<sup>20</sup> Section 776.08, F.S., defines “forcible felony” to mean 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.

<sup>21</sup> Section 985.557(2)(b), F.S., also states that this paragraph does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-q., F.S.,<sup>22</sup> and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device;<sup>23</sup> or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.<sup>24</sup>

The court may sentence the following juveniles who are transferred to adult court by mandatory direct file as an adult, a youthful offender, or a juvenile:

- Juveniles found to have committed the offense or a lesser included offense who:
  - Are 16 or 17 years old at the time of the offense, the offense was listed in s. 775.087(2)(a)1.a.-q., F.S., and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device; and
  - Are any age and the offense involved stealing a vehicle in which the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.<sup>25</sup>

The court must impose adult sanctions on the following juveniles who are transferred to adult court by mandatory direct file and who are found to have committed the offense or a lesser included offense:

- Juveniles 16 or 17 years old at the time of the offense who:
  - Have been previously adjudicated delinquent for an enumerated felony and the juvenile has been found to have committed a second or subsequent violent crime against a person; or
  - Have been found to have committed a forcible felony and have been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other.<sup>26</sup>

### ***Imposing Adult or Juvenile Sanctions***

Judges often have discretion to impose adult or juvenile sanctions when a juvenile is transferred to adult court and is found to have committed the offense. In such instances, the judge must consider specified factors to determine whether adult or juvenile sanctions are appropriate. These include:

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;

<sup>22</sup> This list includes: murder; sexual battery; robbery; burglary; arson; aggravated assault; 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-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.

<sup>23</sup> The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

<sup>24</sup> Section 985.557(2)(c), F.S.

<sup>25</sup> Section 985.565(4)(a)2., F.S.

<sup>26</sup> Section 985.565(4)(a)3., F.S.

- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;<sup>27</sup>
- The sophistication and maturity of the offender;
- The record and previous history of the offender, including:
  - Previous contacts with the Department of Corrections (DOC), the DJJ, the former Department of Health and Rehabilitative Services (HRS), the Department of Children and Families (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;
  - 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 DJJ 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.<sup>28</sup>

The court is required to consider a presentence investigation (PSI) report prepared by DOC regarding the suitability of a juvenile for disposition as an adult or juvenile.<sup>29</sup> The PSI report must include a comments section prepared by the DJJ, with its recommendations as to disposition.<sup>30</sup> The court must give all parties<sup>31</sup> present at the disposition hearing an opportunity to comment on the issue of sentence and any proposed rehabilitative plan, and may receive and consider any other relevant and material evidence.<sup>32</sup>

If juvenile sentences are imposed, the court must adjudge the juvenile to have committed a delinquent act.<sup>33</sup> Upon adjudicating a juvenile delinquent, the court may:

- Place the juvenile in a probation program under the supervision of 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 juvenile to the DJJ for treatment in an appropriate program for an indeterminate period of time until he or she is 21 or sooner if discharged by the DJJ;<sup>34</sup> or

<sup>27</sup> Greater weight is given to offenses against persons, especially if personal injury resulted.

<sup>28</sup> Section 985.565(1)(b), F.S.

<sup>29</sup> Section 985.565(3), F.S. This report requirement may be waived by the offender.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* This includes the parent, guardian, or legal custodian of the offender; the offender's counsel; the state attorney; representatives of DOC and DJJ; the victim or victim's representative; representatives of the school system; and law enforcement involved in the case.

<sup>32</sup> *Id.* Other relevant evidence may include other reports, written or oral, in its effort to determine the action to be taken with regard to the child. This evidence may be relied upon by the court to the extent of its probative value even if the evidence would not be competent in an adjudicatory hearing.

<sup>33</sup> 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.

<sup>34</sup> DJJ must notify the court of its intent to discharge the juvenile from the commitment program no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

- Order disposition under ss. 985.435,<sup>35</sup> 985.437,<sup>36</sup> 985.439,<sup>37</sup> 985.441,<sup>38</sup> 985.45,<sup>39</sup> and 985.455<sup>40</sup>, F.S., as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.<sup>41</sup>

If the court imposes a juvenile sanction and the DJJ determines that the sanction is unsuitable for the juvenile, the DJJ must return custody of the juvenile to the sentencing court for further proceedings, including the imposition of adult sanctions.<sup>42</sup>

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.<sup>43</sup>

The court may not sentence the juvenile to a combination of adult and juvenile punishments.<sup>44</sup>

### ***Effect of Transferring a Juvenile to Adult Court***

If a juvenile transferred to adult court for prosecution is found to have committed the offense or a lesser included offense, the juvenile must have any subsequent violations of law handled thereafter in every respect as an adult.<sup>45</sup> The court must also immediately transfer and certify all unresolved<sup>46</sup> felony cases pertaining to the juvenile to adult court for prosecution.<sup>47</sup>

If the juvenile is acquitted of all charged offenses (or lesser included offenses) contained in the original direct filed case, all felony cases transferred to adult court as a result of the direct file case must be subject to juvenile sanctions.<sup>48</sup>

### ***Juvenile Transfer Statistics from the DJJ***

Statistics made available by the DJJ's Office of Research and Data Integrity show a downward trend in adult court transfers between FY 2010-11 and FY 2014-15, which exceeded the decline

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<sup>35</sup> Probation and postcommitment probation or community service.

<sup>36</sup> Restitution.

<sup>37</sup> Violation of probation or postcommitment probation.

<sup>38</sup> Commitment.

<sup>39</sup> Work program liability and remuneration.

<sup>40</sup> Other dispositional issues.

<sup>41</sup> Section 985.565(4)(b), F.S.

<sup>42</sup> *Id.* DJJ also has recourse if the judge imposes a juvenile sanction and the juvenile proves not to be suitable to the sanction. In such instances, DJJ must provide the sentencing court a written report outlining the basis for its objections to the juvenile sanction and schedule a hearing. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any adult sanction it may have originally lawfully imposed, s. 985.565(4)(c), F.S.

<sup>43</sup> Section 985.565(4)(a)4., F.S.

<sup>44</sup> Section 985.565(4)(b), F.S.

<sup>45</sup> Sections 985.556(5), 985.56(4), and 985.557(3), F.S. This provision does not apply if the adult court imposes juvenile sanctions under s. 985.565, F.S.

<sup>46</sup> 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 been made. *See* s. 985.557(3), F.S.

<sup>47</sup> Sections 985.556(5), 985.56(4), and 985.557(3), F.S.

<sup>48</sup> *Id.*

in felony arrests. Transfers declined 46 percent over the 5-year period, while felony arrests declined 20 percent.<sup>49</sup>

During FY 2014-15, a total of 1,282 individual youth were transferred to the adult court in Florida.<sup>50</sup> The majority of them were 16 or 17 years of age.<sup>51</sup>

The youth had a total of 1,607 arrests that resulted in transfer to the adult court. For this population, the most common offenses that resulted in transfer included the following:

- Burglary (430 arrests-26.8%);
- Armed robbery (258 arrests-16.1%);
- Aggravated assault or battery (198 arrests-12.3%);
- Weapon/Firearm offenses (117 arrests-7.3%);
- Auto theft (77 arrests-4.8%)
- Other robbery (72 arrests-4.5%)
- Sexual battery (68 arrests-4.2%);
- Drug-related felonies (55 arrests-3.4%);
- Murder/manslaughter (49 arrests-3.0%); and
- Grand larceny (42 arrests-2.6%).<sup>52</sup>

### III. Effect of Proposed Changes:

The bill substantially amends two of Florida's current methods for transferring a juvenile to adult court for criminal prosecution. These transfer methods are indictment and direct file. It also amends current provisions requiring the court to impose juvenile or adult sanctions upon juveniles transferred to the adult court.

#### **Direct Filing an Information by the State Attorney**

The bill amends s. 985.557, F.S., by eliminating the mandatory direct file system and modifying the discretionary direct file system to a two-tiered system based on the juvenile's age and enumerated offense.

#### ***Tier One***

The bill permits the state attorney to file an information in adult court when, in his or her judgment and discretion, the public interest requires that adult sanctions be considered and:

- The juvenile is 16 years of age or older and less than 18 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:

<sup>49</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 314* (2015) (on file with Senate Criminal Justice Committee).

<sup>50</sup> *Id.*

<sup>51</sup> 331 youth were 16 years old (25.8%) and 674 youth (52.6%) were 17 years old. There were also 103 (8.0%) 18 year olds, 12 (0.9%) 19 year olds, 4 (.3%) 20 year olds, 6 (.5%) 21 year olds, 123 (9.6%) 15 year olds, 25 (2.0%) 14 year olds, 3 (.2%) 13 year olds, and 1 (.1%) 12 year old. Email from Department of Juvenile Justice (October 29, 2015) (on file with Senate Criminal Justice Committee).

<sup>52</sup> Email from Department of Juvenile Justice (October 29, 2015) (on file with Senate Criminal Justice Committee).



- Murder;
- Manslaughter;
- Sexual battery as defined in s. 794.011(3), F.S.;
- Armed robbery;
- Aggravated assault with a firearm;
- Aggravated child abuse;
- Aggravated stalking;
- Kidnapping;
- Unlawful throwing, placing, or discharging of a destructive device and bomb;
- Aggravated battery resulting in great bodily harm, permanent disability, or permanent disfigurement to a person;
- Carrying, displaying, using, or threatening or attempting to use a weapon or firearm in furtherance of the commission of a felony, provided the use or threatened use does not include the mere acquisition of a deadly weapon or firearm during the felony;
- Possessing or discharging a firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Carjacking;
- Aggravated animal cruelty by intentional acts;
- DUI or BUI resulting in fatality, great bodily harm, permanent disability, or permanent disfigurement to a person; or
- Arson in violation of s. 806.031, F.S.

### ***Tier Two***

The bill allows the state attorney to file an information in adult court when, in his or her judgment and discretion, the public interest requires adult sanctions be considered and:

- The juvenile is 14 or 15 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:
  - Murder;
  - Manslaughter; or
  - Sexual battery in violation of s. 794.011(3), F.S.

A juvenile eligible for direct file cannot be transferred if he or she has:

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

The bill allows, rather than requires, the court to transfer any unresolved felony cases when the transfer is by direct file.

The bill allows a juvenile who is transferred by direct file to request a court hearing, in writing, to determine whether he or she will remain in adult court. The adult court, after considering certain factors, can waive the case back to juvenile court under the bill. These factors include the seriousness of the offense, the extent of the juvenile's alleged participation or role in the offense, the sophistication and maturity of the juvenile, and any prior offenses. This process is called a reverse waiver under the bill.

The bill also requires the DJJ to collect and annually report data to the President of the Senate and Speaker of the House of Representatives relating to juveniles who qualify for transfer by direct file. This data includes, but is not limited to the following:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence;
- Circuit and county of offense;
- Prior adjudicated offenses;
- Prior periods of probation;
- Previous contacts with law enforcement agencies or the courts;
- Initial charges;
- Charges at disposition;
- Whether adult codefendants were involved;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel;
- Whether the child had waived counsel;
- Risk assessment instrument score;
- The child's medical, mental health, substance abuse, or trauma history;
- The child's history of physical or 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 experienced a failed adoption;
- Whether the child has fetal alcohol syndrome or was exposed to controlled substances at birth;
- Whether the child has below-average intellectual functioning or is eligible for exceptional student education services;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a Children in Need of Services or Family in Need of Services (CINS/FINS) petition or a dependency petition;
- Plea offers made by the state and the outcome of any plea offers;
- Whether the child was transferred for criminal prosecution as an adult;
- The case resolution in juvenile court;
- The case resolution in adult court; and
- Disposition data, including, but not limited to, whether the child received adult sanctions, juvenile sanctions, or diversion, and, if sentenced to prison, length of prison sentence or enhanced sentence.

### **Indictment by Grand Jury**

The bill amends s. 985.56, F.S., by:

- Limiting the state attorney's authority to convene a grand jury to apply to juveniles who are 14 years of age or older (currently available for juveniles of any age charged with an offense punishable by death or life imprisonment).

- Allowing, rather than requiring, the court to transfer any unresolved felony cases upon a returned indictment; and
- Prohibiting a juvenile who is eligible for indictment from being transferred to adult court for criminal prosecution if the juvenile is pending a competency hearing in juvenile court or has been previously found to be incompetent and has not been restored to competency by a court.

### **Imposing Adult or Juvenile Sanctions**

Unlike current law, the bill does not require the court to impose adult sanctions. It amends s. 985.565, F.S., to provide that a juvenile who is transferred by direct file or judicial waiver and is found to have committed a violation of law or a lesser included offense may be sentenced as:

- An adult;
- A youthful offender under ch. 958, F.S.; or
- A juvenile.

It also amends this section by modifying existing criteria and adding additional criteria the court must consider when determining whether juvenile sanctions or adult sanctions are appropriate.

The bill includes the following additional criteria for courts to consider:

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

The bill modifies the following existing criteria that a court considers:

- The sophistication and maturity of the juvenile, including:
  - The juvenile's age, intellectual capacity, and mental and emotional health at the time of the offense;
  - The juvenile'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 on the juvenile's participation in the offense; and
  - The effect, if any, of characteristics attributable to the juvenile's age on his or her judgment.
- The record and previous history of the juvenile, including:
  - Previous contacts with the DOC, the DJJ, HRS, and the DCF and the adequacy and appropriateness of any services provided to address the juvenile's needs;
  - Previous contacts with law enforcement agencies and the courts;
  - History of abuse, abandonment, or neglect; and
  - Identification of the juvenile as having a mental, physical, or intellectual or developmental disability or having previously received mental health services or treatment.

The bill removes the provision allowing the court to consider whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

The bill requires the court to render an order including specific findings of fact and the reasons for its decisions to impose adult sanctions. The order is reviewable on appeal under s. 985.534, F.S., and the Florida Rules of Appellate Procedure.

The bill requires the court to consider any reports that may assist the court in its decision to impose juvenile or adult sanctions. These include, but are not limited to: prior predisposition reports; psychosocial assessments; individual education plans; developmental assessments; school records; abuse or neglect reports; home studies; protective investigations; and psychological or psychiatric evaluations.

Under the bill, the juvenile, state attorney, and defense counsel have the right to examine these reports, and to question the parties responsible for them at the hearing.

The bill amends this section by removing the prohibition on imposing both adult and juvenile sanctions. It also removes the requirement that the DJJ return the juvenile to the sentencing court for further proceedings if the department determines that the juvenile sanction is unsuitable for the juvenile. (Current law still requires the DJJ to provide the sentencing court with written reasons upon determining that a juvenile is not suitable to a commitment program, juvenile probation program, or a treatment program within the department. If that occurs, the court must then determine whether to resentence the juvenile.)

The effective date of the bill is July 1, 2016.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

### C. Government Sector Impact:

This bill has the effect of increasing the number of juveniles committed to the DJJ and reducing the number of juveniles handled by the DOC (probation and state prison).

#### **Impact to DJJ (need for additional beds)**

According to the DJJ, the bill is likely to reduce the number of juveniles transferred to the adult system and increase the number of juveniles within the juvenile justice system. The DJJ estimates that this will result in at least 644 additional youth remaining in the juvenile system who would be diverted into the adult system under current practice. Based on the population of youth recently transferred to the adult system, the DJJ estimates that 17.7% of these youth (114) would be placed in probation, 17.7% (114) would be placed in non-secure commitment, 34.18% (220) would be placed in high-risk secure commitment and 30.38% (196) would be placed in maximum-risk secure commitment. Based upon these estimates and using the average per diem rates and average cost per youth supervision rates for Fiscal Year 2014-2015, the DJJ estimates the fiscal impact to be a minimum of \$35.8 million in the first year and \$44.5 million annually in subsequent years.<sup>53</sup>

According to the department, this fiscal impact estimate does not take into consideration the need to procure additional programs, staff needed to monitor or administer additional programs, or the need to build or procure facilities to accommodate this additional population. The DJJ currently has an operating capacity of just over 2,100 residential beds and has a current utilization rate of 92%. If sufficient beds are not made available, youth awaiting placement in a residential program would be housed in secure detention or in their home communities, creating a significant back log of youth awaiting placement. Alternately, the department would require funding to procure additional programs and to retrofit current facilities, build or procure new facilities to house these youth in addition to the per diem fiscal addressed previously. The department could address the need for non-secure beds by retrofitting current facilities for use, which would require nearly \$2.3 million. Construction costs could exceed \$100 million to provide bed space sufficient for the high-risk and maximum-risk residential programs. The per diem rates used are based on per diems for programs that utilize DJJ (state-owned) facilities. Per diem rates for programs that do not utilize state-owned facilities are potentially higher.<sup>54</sup>

The bill also requires the DJJ to collect and report on specific data that will require modification of the Juvenile Justice Information (JJIS) System, which the DJJ estimates will cost \$93,600.<sup>55</sup>

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<sup>53</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 314* (2015) (on file with Senate Criminal Justice Committee).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

**Impact to DOC (cost savings)**

The Criminal Justice Impact Conference (CJIC) has not met on this bill, but last session it determined that very similar legislation would have a negative indeterminate prison bed impact on the DOC (i.e., an unquantifiable reduction in the need for prison beds).<sup>56</sup>

In addition to cost savings from the need for less prison beds, there should also be an indeterminate degree of savings from fewer adult probation placements.

**VI. Technical Deficiencies:**

The bill appears to delete language that mandates how the court must sentence a juvenile who has been transferred to adult court by indictment. The word “indictment” may need to be added on line 352 to ensure that the court has authority to sentence such a juvenile as an adult, a youthful offender, or a juvenile.

**VII. Related Issues:**

The DJJ indicates that the reconfiguration of the JJIS system that will be required to capture the pertinent data elements under the bill may take up to 6 months to complete, making implementation by the effective date (July 1, 2016) difficult.<sup>57</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.557, 985.56, and 985.565.

This bill makes technical and conforming changes to the following sections of the Florida Statutes: 985.556, 985.04, 985.15, 985.265, 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.

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

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<sup>56</sup> CJIC made this determination on March 11, 2015 about HB 783.

<sup>57</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 314* (2015) (on file with Senate Criminal Justice Committee). Additional items required by the bill that the DJJ does not currently capture include whether adult codefendants were involved, whether child codefendants were involved who were transferred to adult court, whether the child was represented by counsel, whether the child waived counsel, whether the child has fetal alcohol syndrome or was exposed to controlled substances at birth, whether the child has below-average intellectual functioning or is eligible for exceptional student education services, any plea offers and resulting outcomes, and length of prison sentence or enhanced sentence. *Id.*