

**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 1260

INTRODUCER: Senator Wright

SUBJECT: Mandatory Direct File

DATE: April 5, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 1260 repeals all provisions relating to mandatory direct file, the process in which a state attorney is required to file an information charging a child in adult court. As a result, the bill effectively eliminates this method of transferring a child to adult court for prosecution.

The bill also amends s. 985.565, F.S., removing references to mandatory direct file for the purposes of sentencing, to conform to changes made by the act.

The fiscal impact of the bill is indeterminate at this time. However, as a result of the repeal of mandatory direct file, there may be an increase in the number of children held in the custody of the Department of Juvenile Justice (DJJ). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

**II. Present Situation:**

**Transfer of a Child to Adult Court**

There are three methods of transferring a child to adult court for prosecution: judicial waiver,<sup>1</sup> indictment,<sup>2</sup> or direct filing an information.

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

<sup>2</sup> A grand jury can indict a child of any age who is charged with an offense punishable by death or life imprisonment. Upon indictment, the child's case must be transferred to adult court for prosecution. See s. 985.56, F.S.

***Direct File***

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

**Discretionary Direct File**

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may direct file a child when he or she is:

- 14 or 15 years of age and is charged for the commission of, attempt to commit, or conspiracy to commit one of the following felony offenses:
  - Arson;
  - Sexual battery;
  - Robbery;
  - Kidnapping;
  - Aggravated child abuse;
  - Aggravated assault;
  - Aggravated stalking;
  - Murder;
  - Manslaughter;
  - Unlawful throwing, placing, or discharging of a destructive device or bomb;
  - Armed burglary in violation of s. 810.02(2)(b), F.S.;
  - Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
  - Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
  - Aggravated battery;
  - Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
  - Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
  - Grand theft in violation of s. 812.014(2)(a), F.S.;
  - Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
  - Home invasion robbery;
  - Carjacking;
  - Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
  - Grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.;<sup>4</sup>
- 16 or 17 years of age and is charged with any felony offense;<sup>5</sup> or

<sup>3</sup> Department of Juvenile Justice, *2019 Legislative Bill Analysis for SB 1260*, (March 13, 2019) (on file with the Senate Criminal Justice Committee).

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

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

- 16 or 17 years of age and is charged with a misdemeanor, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.<sup>6</sup>

If a child who has been transferred to adult court pursuant to discretionary direct file is found to have committed a violation of state law or a lesser included offense for which he or she was charged as part of the criminal episode, the court may sentence the child as an adult, as a juvenile, or pursuant to ch. 958, F.S.<sup>7</sup>

#### Mandatory Direct File

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

- 16 or 17 years of age at the time of the alleged offense and:
  - Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;<sup>8</sup>
  - Is charged with a forcible felony<sup>9</sup> and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;<sup>10</sup> or
  - Is charged with committing or attempting to commit an offense listed in s. 775.087(2)1.a.-p., F.S.,<sup>11</sup> and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;<sup>12</sup> or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.

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

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

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

<sup>8</sup> The enumerated felonies include: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault. *See* s. 985.557(2)(a), F.S.

<sup>9</sup> Section 776.08, F.S., defines “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the threat of physical force or violence against any individual.

<sup>10</sup> Section 985.557(2)(b), F.S., provides that this provision does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the child in adult court.

<sup>11</sup> The offenses include murder; sexual battery; robbery; burglary; arson; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis; trafficking in cocaine; capital importation of cocaine; trafficking in illegal drugs; capital importation of illegal drugs; trafficking in phencyclidine; capital importation of phencyclidine; trafficking in methaqualone; capital importation of methaqualone; trafficking in amphetamine; capital importation of amphetamine; trafficking in flunitrazepam; trafficking in gamma-hydroxybutyric acid (GHB); trafficking in 1,4-Butaneidol; trafficking in Phenethylamines; or any other violation of s. 893.135(1), F.S. Section 775.087(2)(a)1.a.-p., F.S.

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

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

**III. Effect of Proposed Changes:**

Current law authorizes a state attorney to transfer a child to adult court pursuant to mandatory or discretionary direct file. The bill repeals all provisions relating to mandatory direct file.

The bill also amends s. 985.565, F.S., removing references to mandatory direct file for the purposes of sentencing, to conform to changes made by the act.

The bill is effective July 1, 2019.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact of the bill is indeterminate at this time. In FY 2017-18, there were 302 children transferred to adult court that met the criteria for mandatory direct file.<sup>14</sup> While the bill repeals all provisions related to mandatory direct file, it is unclear how many children would be eligible for transfer to adult court pursuant to one of the other methods

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<sup>14</sup> *Supra*, n 3.

available to prosecutors. However, if there is a reduction in the number of children transferred to adult court as a result of the elimination of mandatory direct file, this is likely to result in a negative prison bed impact (a decrease in the number of prison beds) on the Department of Corrections and a positive residential bed impact (an increase in the number of beds) on the DJJ.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

**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.