

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 Judiciary

BILL: SB 474

INTRODUCER: Senator Bracy

SUBJECT: Prosecuting Children as Adults

DATE: February 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

SB 474 increases the minimum age at which certain juvenile offenders can be transferred or directly referred to the criminal court.

Judicial waiver refers to the process where a state attorney may request the juvenile court to waive juvenile court jurisdiction and thereby allow a case to transfer to criminal court. The bill changes the allowable ages for judicial waiver from 14-17 years of age to 15-17 years of age.

Direct file refers to where a state attorney has the discretion to bypass the juvenile court and directly file charges against a juvenile in criminal court. The bill changes direct file of enumerated serious felony offenses from 14-15 year of age to 15-16 years of age; and changes direct file of felonies, and direct file of misdemeanors with a prior felony offense, from 16-17 years of age to only apply to juveniles 17 years of age.

The fiscal impact of the bill to the state is indeterminate. There is minimal to no estimated fiscal impact on counties.

The bill is effective July 1, 2021.

II. Present Situation:

Delinquency - In General

The state constitution allows creation of a separate juvenile justice system:

When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Any child so charged shall,

upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.¹

A child for purposes of delinquency court is defined as any individual whose offense occurred before the offender's 18th birthday.² Juvenile justice policy and procedure is governed by ch. 985, F.S. Legislative findings governing that chapter say, in relevant part, that:

The purposes of this chapter are . . . to assure that the sentencing and placement of a child tried as an adult be appropriate and in keeping with the seriousness of the offense and the child's need for rehabilitative services, and that the proceedings and procedures applicable to such sentencing and placement be applied within the full framework of constitutional standards of fundamental fairness and due process.³

The Legislature also finds that certain juveniles have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. It is the intent of the Legislature to establish clear criteria in order to identify these juveniles and remove them from the juvenile justice system.⁴

Juvenile Sanctions and Procedures vs. Criminal Court

There are significant differences between delinquency court and the criminal court:

- An adjudication of delinquency is not a conviction. A delinquent is not a criminal. Adjudication by the delinquency court does impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction, or to disqualify or prejudice the child in any civil service application or appointment, with limited exceptions.⁵
- Where most criminal court records are mostly open to public inspection and copying, most delinquency court records are exempt from public disclosure.⁶
- There is no bail in the delinquency system. Accused offenders are released unless detention is warranted.⁷
- Delinquency cases are tried before a circuit judge. There is no right to a jury trial.
- Criminal court sentences may sentence an offender to jail or prison for a term up to that allowed by statute. Delinquency court, where allowed, may order an offender to a treatment program which may include confinement in the treatment facility.

¹ FLA. CONST. art. I, s. 15(b).

² Section 985.03(7), F.S.

³ Section 985.01(1)(f)2., F.S.

⁴ Section 985.02(4)(b), F.S.

⁵ Section 985.35(6), F.S. Limited exceptions include: A finding of delinquency qualifies as a "conviction" for purposes of issuance, suspension or revocation of a driver license. A finding of delinquency is a conviction for purposes of examining that child's past record in future delinquency cases. A delinquent found to have committed a felony is disqualified from lawfully possessing a firearm until age 24 unless the record is expunged. Section 985.35(7), F.S.

⁶ Section 985.045(2), F.S.

⁷ Sections 985.115, 985.255, and 985.26, F.S.

- Criminal sentences may extend for decades, even for life. Juvenile sanctions and treatment programs end no later than the offender reaching age 21.⁸

Juvenile Offenders Who Must be Tried in Criminal Court

A child of any age indicted by a grand jury for an offense is subject to criminal court. A child of any age may voluntarily waive juvenile court jurisdiction in favor of the criminal court. Both are uncommon, there were four of each in the most recent fiscal year.⁹ The bill does not affect these laws.

The term “mandatory direct file” refers to laws that require the state attorney to file an information¹⁰ in criminal court, thereby bypassing juvenile court. In 2019, Florida repealed laws on mandatory direct file.¹¹

Judicial Waiver

The term “judicial waiver” refers to the process by which the juvenile court may waive its jurisdiction over an offense committed by a child. Judicial waiver applies to certain offenders who were between 14 and 17 years of age at the time of the offense. Upon waiver, the state attorney may file an information in criminal court. A juvenile court hearing a judicial waiver matter must consider a number of factors, including the seriousness of the offense, age, maturity, and prior record.¹² In the most recent fiscal year, courts approved five waiver motions.¹³

There are two forms of judicial waiver: discretionary and mandatory. In discretionary waiver, the state attorney may file the motion regarding any offense. In mandatory waiver, the state attorney must either file a motion requesting waiver, direct file the offender (if allowed), or must file a notice of reasons why the state attorney elects not to file for waiver or direct file.¹⁴ Mandatory waiver is triggered if:

- The child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for 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, and the child is currently charged with a second or subsequent violent crime against a person; or
- The child commits a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person;

⁸ Sections 985.0301(5)(b) and (5)(c), F.S. Restitution is not a sanction, and the delinquency court retains jurisdiction until paid. Section 985.0301(5)(d), F.S.

⁹ Fla. Dept. of Juvenile Justice, *Senate Bill 474 Agency Analysis* (February 11, 2021).

¹⁰ In criminal law, the term “information” refers to the initial charging document that opens a criminal court file. It is analogous to the civil complaint that opens a civil action.

¹¹ Chapter 2019-167, s. 76, Laws of Fla.

¹² Section 985.556(4)(c), F.S.; *Kent v. U.S.*, 383 U.S. 541 (1966).

¹³ Fla. Dept. of Juvenile Justice, *Senate Bill 474 Agency Analysis* (February 11, 2021).

¹⁴ Section 985.556(3)(a), F.S.

Direct File in Criminal Court

The term “direct file” refers to the authority of a state attorney to file an information in criminal court, thereby bypassing juvenile court and allowing for adult sanctions. The state attorney may only exercise such discretion where “in the state attorney’s judgment and discretion the public interest requires that adult sanctions be considered or imposed.”¹⁵ A criminal court considering sentencing in a direct file case has some discretionary leniency in sentencing that is unavailable to adult offenders.¹⁶ Direct file is the most common reason that juveniles are tried in criminal court, accounting for 98 percent (788) of all transfers in the most recent fiscal year.¹⁷ In that fiscal year, there were 45,336 arrests, thus, direct file occurred in approximately 1.7 percent of all juvenile arrests.¹⁸

As to children who are 14 or 15 years of age at the time of the offense, direct file is only applicable to a juvenile charged with 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

¹⁵ Sections 985.557(1)(a) and (1)(b), F.S.

¹⁶ See s. 985.565, F.S.

¹⁷ Fla. Dept. of Juvenile Justice, *Senate Bill 474 Agency Analysis* (February 11, 2021).

¹⁸ “Approximately” because there is a natural delay between arrest and the decision to direct file. Some of the FY 2019-20 direct file cases were arrested in the previous year, and some arrested in that FY were later subject to direct file. Comparisons were not made to prior years because mandatory direct file was in law.

- 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.¹⁹

As to children aged 16 or 17, direct file is applicable to any juvenile accused of any felony; or any juvenile accused of a misdemeanor if the juvenile has committed two or more prior offenses, at least one of which was a felony.

Trends in Florida

Juvenile crime, and the number of juveniles tried in the criminal court, have been trending down in the recent past.

Florida Delinquency Statistics from State Courts		
	FY 2008-09²⁰	FY 2018-19²¹
Delinquency Complaints	111,425	45,263
Complaints Disposed of Prior to Petition	53,873	16,494
Petitions Filed	64,585	30,076
Judicial Waiver Requests Filed	102	146
Direct File	2,857	1,095 ²²
Florida Population	18,687,425 ²³	21,100,003

Note that these numbers were from times when mandatory direct file was in effect. Mandatory direct file was repealed in 2019.

Florida Delinquency Statistics from Dept. of Juvenile Justice²⁴		
	FY 2015-16	FY 2019-20
Delinquency Arrests	69,864	45,366
Transfer to Criminal Court (all methods)	1,663	1,011
Florida Population of Minors	1,840,134	1,947,292

Transfers to Criminal Court by Age, from Dept. of Juvenile Justice²⁵		
Age	FY 2015-16	FY 2019-20
17+	825	524

¹⁹ Section 985.557(1)(a)1.-19., F.S.

²⁰ Florida’s Trial Court Statistical Reference Guide for FY 2008-09 (entire column other than population).

²¹ Florida’s Trial Court Statistical Reference Guide for FY 2018-19 (entire column).

²² Note that for the same time DJJ reports 1,127 direct files. It is unclear why there is a disparity.

²³ Office of Economic and Demographic Research, Florida Legislature.

²⁴ Fla. Dept. of Juvenile Justice, *Delinquency Profile 2020*, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last visited Feb. 9, 2021).

²⁵ Fla. Dept. of Juvenile Justice, *Delinquency Profile 2020*, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last visited Feb. 9, 2021).

Transfers to Criminal Court by Age, from Dept. of Juvenile Justice²⁵		
15-16	423	254
13-14	21	23

Florida Compared to Other States

Florida is one of 46 states that uses age 18 as the general line to define delinquency. One state will be higher than age 18 starting next year, and the remaining three use age 17.²⁶

It is claimed that Florida has the highest rate of transfers of juveniles to criminal court,²⁷ but a leading researcher has cautioned that “[c]ross-state comparisons should be made with caution as state-reported trends represent different data sources and units of count.”²⁸ The three states that treat all 17 year olds as adults for criminal purposes are likely to have significantly more minors treated as adults in the criminal justice system than Florida.

III. Effect of Proposed Changes:

SB 474 increases the ages related to judicial waiver and direct file. This will likely result in fewer juvenile offenders will be tried as an adult in the criminal court.

The bill changes the ages for all grounds for judicial waiver from 14-17 years of age to 15-17 years of age.

The bill changes direct file of enumerated serious felony offenses from 14-15 years of age to 15-16 years of age; and changes direct file of felonies, and direct file of misdemeanors with a prior felony offense, from 16-17 years of age to only 17 years of age.

The future actual impact can be estimated by reference to the immediate past. The Department of Juvenile Justice provided this historical analysis:

In FY 2019-2020, there were 20 youth who were 14 years of age who were direct filed and 249 who were 16 years of age. The bill would remove the ability for the 14-year-olds to be direct filed. Of the 249 youth who were 16 years of age at the time of their direct filing, only 164 of them would be eligible for direct file with this new change. This [bill] would remove 20 youth who were 14 years of age and 85 youth who were 16 years of age from being eligible for direct file.²⁹

²⁶ Nat’l Center for Juvenile Justice, *Jurisdictional Boundaries*, www.jjgps.org/jurisdictional-boundaries#delinquency-age-boundaries (last visited Feb. 8, 2021). The three states at age 17 are Georgia, Texas and Wisconsin. Vermont will be age 19 in mid-2022 with some provisions to age 21.

²⁷ *Issue Commentary - Children Tried as Adults in Florida*, the James Madison Institute (February 2015).

²⁸ *Jurisdictional Boundaries*, supra.

²⁹ Fla. Dept. of Juvenile Justice, *Senate Bill 474 Agency Analysis* (February 11, 2021).

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Juvenile offenders not transferred to the criminal court must be dealt with by the Department of Juvenile Justice. The estimated 105 juveniles annually who would not be eligible for transfer represent more difficult, and thus more expensive, cases. The department estimates the following detention costs:

Pre-Adjudicatory Detention (partially reimbursed by counties)	\$95,335 annually
Post-Adjudicatory Detention (fully paid by state)	\$190,680 annually

It is likely that all of the estimated 105 juveniles annually affected by this bill would be referred by the delinquency court to some form of treatment program. The department has insufficient data to be able to estimate what levels of treatment those 105 would be assigned. The current estimated cost per juvenile of treatment programs is:

Maximum Risk Residential	\$159,315
High Risk Residential	\$ 85,709
Nonsecure Residential	\$ 51,067
Day Treatment Probation	\$ 17,751

Additionally, each juvenile referred to residential treatment requires an evaluation at a cost of \$541.

These estimates do not include costs of post-commitment probation or transition services.

Counties are liable to the state for the cost of pre-adjudication detention of juveniles, unless the county is fiscally-constrained. The bill increases the number of juveniles who will be in juvenile detention and thus will increase annual costs to non-fiscally constrained counties by an indeterminate amount estimated at \$47,668 annually statewide.³⁰ This cost will likely be offset by reduced county jail expenditures.

The state will likely see a relatively small decrease in costs to the Department of Corrections as there will be fewer prison admissions. The Criminal Justice Estimating Conference has not reviewed this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.556, and 985.557.

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.

³⁰ Fla. Dept. of Juvenile Justice, *Senate Bill 474 Agency Analysis* (February 11, 2021).