

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 Children, Families, and Elder Affairs

BILL: CS/SB 626

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Bracy

SUBJECT: Juvenile Justice

DATE: March 3, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	Fav/CS
2.			CJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

The bill, also cited as the “Kaia Rolle Act”, creates s. 985.031, F.S., prohibiting children under the age of 7 from being arrested, charged with a violation of law, or adjudicated delinquent for any acts that occur before he or she reaches 7 years of age except for any child who commits a forcible felony as defined in s. 776.08, F.S.

The bill does not appear to have a fiscal impact on state or local governments. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Juvenile Capability

There are various age limitations on criminal liability throughout the United States. A recent United Nations study suggests that all member states should set a minimum age of criminal responsibility no younger than age 14.¹ Several states have enacted legislation to establish a minimum age at which children may be held criminally liable.² Of the states that have passed

¹ *Id.*

² NJDC Article; *See also* Interstate Commission for Juveniles, *Age Matrix*, available at <https://www.juvenilecompact.org/age-matrix> (last visited February 11, 2021).

this legislation, the minimum age ranges from 6 to 12 years of age.³ For instance, Massachusetts law protects children 12 years of age or younger from criminal liability⁴ whereas the age limit in North Carolina is 6 years of age or younger.⁵ Fifteen jurisdictions set the minimum age at 10.⁶ Some states have adopted exceptions to the minimum age requirement, such as Nevada which exempts children who are 10 years of age or younger from criminal liability unless the child between 8 to 10 years old is charged with murder or a sexual offense.⁷

Model Penal Code (MPC) sets out four mens rea that may be required to show culpability for any valid criminal conviction,⁸ namely purposely,⁹ knowingly,¹⁰ recklessly,¹¹ and negligently.¹² Mens rea is not required for a person to be convicted of a crime that provides for strict liability.¹³ Some studies suggest and precedents from the U.S. Supreme Court have held that adolescents have a diminished capacity to make consistent choices, engage in self-management, assess risk perception, and calculate future consequences,¹⁴ in other words, to formulate a mens rea.

Offenses Committed by Children

A person may not be tried for a capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duties in the militia when tried by courts martial.¹⁵

³ National Juvenile Defender Center, *Minimum Age for Delinquency Adjudication – Multi-jurisdiction Survey*, available at <https://njdc.info/practice-policy-resources/state-profiles/multi-jurisdiction-data/minimum-age-for-delinquency-adjudication-multi-jurisdiction-survey/> (last visited February 11, 2021) (hereinafter cited as “NJDC Article”).

⁴ Section 119.52, Mass. Gen. Laws Ann. Ch.

⁵ Section 7B-1501(7), N.C. Gen. Stat. Ann.

⁶ NJDC Article (citing American Samoa, Arkansas, Arizona, Colorado, Kansas, Louisiana, Minnesota, Mississippi, Nevada, North Dakota, Pennsylvania, South Dakota, Texas, Vermont, and Wisconsin).

⁷ Section 194.010, N.R.S.

⁸ Section 2.02(1), MPC.

⁹ Section 2.02(2)(a), MPC. If the material element of an offense involves the nature of a person’s conduct or a result thereof, a person acts purposely when it is his conscious object to engage in conduct of that nature or to cause such a result, and, if a material element involves the attendant circumstances, he is aware of them or he believes or hopes that they exist. Material element means issues relating to the harm or evil sought to be prevented by the law. MPC § 1.13(10).

¹⁰ Section 2.02(2)(b), MPC. If a material element of an offense involves the nature of a person’s conduct or the attendant circumstances, a person acts knowingly when he is aware that his conduct is of that nature or that such circumstances exist, and, if the material element involves the result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

¹¹ Section 2.02(2)(c), MPC. A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor’s conduct and the circumstances known to him, his conduct involves a gross deviation from the standard that a law-abiding person would observe in the actor’s situation.

¹² Section 2.02(2)(d). A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor’s failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation.

¹³ Section 2.02, MPC.

¹⁴ Jenny E. Carroll, *Brain Science and the Theory of Juvenile Mens Rea*, 94 N.C. L. REV. 539, 582 (2016). See also *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012).

¹⁵ FLA. CONST. art. I, s. 15(a).

However, a child may be charged with a violation of law as an act of delinquency instead of a crime and tried without a jury or other requirements applicable to criminal cases.¹⁶ If a child is found to be delinquent, he or she must be disciplined as provided by law.¹⁷

Under ch. 985, F.S., the terms child, juvenile or youth currently mean any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.¹⁸ However, Florida law does not presently restrict the age in which a child, juvenile, or youth may be arrested, charged with a violation of the law, or adjudicated dependent.

Florida's Juvenile Justice System

The Department of Juvenile Justice (DJJ) is tasked with providing a full continuum of care to youth, including but not limited to, prevention,¹⁹ diversion,²⁰ and detention,²¹ probation,²² residential commitment.^{23, 24}

Prevention Services

The purpose of prevention services mandated under ch. 985, F.S., is to reduce recidivism, protect public safety, and assist with at-risk youth's reentry into the community.²⁵ As a condition of state funds, the DJJ is required, in part, to design programs providing services to further one or more of the following strategies:

- Design the programs providing such services to further one or more of the following strategies:
 - Encouraging youth to attend and succeed in school.
 - Engaging youth in productive and wholesome activities during non-school hours that build positive character, instill positive values, and enhance educational experiences.
 - Encouraging youth to avoid the use of violence.
 - Assisting youth in acquiring the skills needed to find meaningful employment, which may include assisting the youth in finding a suitable employer.
- Provide demographic information, dates of services, and types of interventions received by each youth.²⁶

¹⁶ FLA. CONST. art. I, s. 15(b).

¹⁷ *Id.*

¹⁸ Section 985.03(7), F.S.

¹⁹ *See* s. 985.17, F.S.

²⁰ Section 985.12, F.S. (providing for civil citation or similar arrest diversion programs).

²¹ Chapter 985, Part V, F.S.

²² Section 985.435, F.S.

²³ Section 985.441, F.S. The DJJ is also responsible for probation services (s. 985.435, F.S.) and residential commitment (s. 985.441, F.S.). Sections 985.435(1) and 985.441(1), F.S., provide the court with jurisdiction to sanction children who are adjudicated delinquent to probation or residential commitment.

²⁴ The DJJ, *Agency Analysis for SB 626*, p. 2, February 8, 2021 (On file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "DJJ Analysis").

²⁵ Section 985.17(1), F.S.

²⁶ Section 985.17(4)(a), F.S.

For FY 2019-2020, the DJJ reports that 990 children under the age of 7 were admitted to a prevention program.²⁷ The DJJ partners with several agencies and other organizations to provide these services to the children, including, in part, the:

- Department of Children and Families;
- Department of Juvenile Justice; and
- Prevention Partnership.

Civil Citations

Each judicial circuit must establish a civil citation or similar diversion program.²⁸ These programs are designed to divert children who have committed misdemeanor offenses from the juvenile delinquency system.²⁹

Each circuit must determine which misdemeanor offenses qualify and other eligibility of the program.³⁰ Examples of program requirements include community service, restitution, family counseling, substance abuse and mental health treatment.³¹ A civil citation or similar diversion program has been implemented in 65 counties in Florida.³² Bradford and Hardee counties have not established such a program.³³

Since 2011, over 76,000 eligible first-time youth offenders who have committed a misdemeanor offense have been offered a civil citation pre-arrest to participate in a division program.³⁴

Notice to Appear

When a child violates the law, the arresting officer may elect to release the child as provided by law to a parent, responsible adult relative, or legal guardian, and issue a notice of appear at a designated court or government office at a specified date and time provided conditions articulated under the rules are met.³⁵

²⁷ The DJJ, Electronic mail from Rachel Moscoso, Legislative Affairs Director, RE: Agency Bill Analysis for SB 626, February 8, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (noting that prevention services serve at-risk youth but the 990 children who participated in the prevention services were not due to a delinquent act or charge).

²⁸ Section 985.12(1), F.S.

²⁹ *Id.*

³⁰ Section 985.12(2)(b)1. and 2., F.S.

³¹ Section 985.12(2)(b)4., F.S. The DJJ, *Overview Look Here to Locate the Civil Citation Provider in your Area*, available at <http://www.djj.state.fl.us/partners/our-approach/florida-civil-citation> (last visited February 11, 2021) (listing the civil citation and similar prearrest diversion programs in Florida, and depicting the process for civil citation and similar prearrest diversion programs in a flow chart).

³² Florida Department of Juvenile Justice, *Civil Citation Implementation by County as of October 2019*, available at <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-implementation-map-10-2020.pdf?sfvrsn=4> (last visited February 11, 2021).

³³ *Id.*

³⁴ DJJ Analysis at p. 2. *See also* The DJJ, *Civil Citation and Similar Diversion Program Best Practices Guide*, (2020), available at <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-and-similar-diversion-program-best-practices-guide-2020.pdf?sfvrsn=2> (last visited February 11, 2021) (explaining statewide utilization for the fiscal year 2019-20 was 59 percent).

³⁵ *See* Rule 8.045(b), Fla. R. Juv. P. An officer may issue a notice to appear unless: (1) the child fails or refuses to sufficiently identify himself or herself or supply the required information; (2) the child refuses to sign the notice to appear; (3) the officer has reason to believe that the continued liberty of the child constitutes an unreasonable risk of bodily injury to the child or others; (4) the child has no ties with the jurisdiction reasonably sufficient to ensure an appearance or there is substantial risk

Taking a Child Into Custody

Art. 1, s. 14 of the Florida Constitution states that unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of law shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

The Florida Statutes does not presently distinguish the circumstances under which a child may be taken into custody based on the age of the youth. Section 985.101(1), F.S., provides, in part, that any child may be taken into custody in the following circumstances:

- Pursuant to an order of the circuit court, based upon sworn testimony, either before or after a petition is filed;
- For a delinquent act or violation of law, pursuant to Florida law pertaining to a lawful arrest;
- By a law enforcement officer for failing to appear at a court hearing after being properly noticed; or
- By a law enforcement officer who has probable cause to believe that:
 - The child is in violation of the conditions of the child’s probation, supervised release detention, postcommitment probation;
 - Conditional release supervision;
 - Has absconded from nonresidential commitment; or
 - Has escaped from residential commitment.³⁶

Intake and Assessment

Every child under the age of 18 charged with a crime in Florida is referred to the DJJ.³⁷ Intake and screening services for youth referred to the DJJ are performed at a Juvenile Assessment Center (JAC),³⁸ but must be performed by a the DJJ employee.³⁹ Once brought into intake, the DJJ assigns the child a juvenile probation officer (JPO) to determine what, if any, detention care is necessary.⁴⁰ The JPO makes an initial decision regarding detention care placement using the “Detention Risk Assessment Instrument.”⁴¹ In certain instances, the JPO does not have discretion and must place a child in secure detention (e.g., when a child is charged with possessing or

that the child will refuse to respond to the notice; (5) the officer has any suspicion that the child may be wanted in any jurisdiction; or (6) it appears that the child has previously failed to respond to a notice or a summons or has violated the conditions of any pretrial release program.

³⁶ Section 985.101(1)(a), F.S.

³⁷ A referral is similar to an arrest in the adult criminal justice system. See the DJJ, *Probation and Community Intervention, Overview*, available at <http://www.djj.state.fl.us/services/probation> (last visited February 11, 2021).

³⁸ Section 985.135(4), F.S.

³⁹ Section 985.14(2), F.S.

⁴⁰ Section 985.25(1), F.S.

⁴¹ Sections 985.25(1)(b) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument must be developed, when and how it must be updated, and what factors the assessment instrument should identify when evaluating a child to determine whether detention placement is appropriate.

discharging a firearm on school property).⁴² The JPO serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.⁴³

Detention Care System

Detention care is the temporary care of children pursuant to an adjudication or order of the court.⁴⁴ Children may be detained in either secure⁴⁵ or supervised release detention.⁴⁶

Section 985.24(1), F.S., provides guidelines for the court to use in ordering detention care that address the child's prior history with the juvenile justice system, and other risk factors.⁴⁷

A child may not be held in detention for more than 24 hours without a detention hearing.⁴⁸ A detention hearing is conducted by a circuit judge who reviews the assessment instrument to determine if there is probable cause that the child committed the offense and the need for continued detention.⁴⁹ A court's detention order must include specific instructions for release of the child from detention.⁵⁰

Probation or Postcommitment Probation (Probation)

A child's probation program must include both a penalty and a rehabilitative component.⁵¹ Each child is assigned a juvenile probation officer who monitors the child's compliance and helps the child connect with service providers.

If the child does not comply with terms of probation, the child may be brought before the court on a violation of probation. The violation may be a substantive violation for committing a new criminal offense or a technical violation for failure to comply with a condition of probation.⁵² If a child admits to the violation or is found by the court to have violated probation, the court must enter an order revoking, modifying, or continuing probation.⁵³ Specifically, the court may:

- Place the child into an alternative consequence program;

⁴² Section 985.25(1)(b), F.S.

⁴³ Section 985.145(1), F.S.

⁴⁴ Section 985.03(18), F.S.

⁴⁵ Section 985.03(18)(a), F.S., defines "secure detention" as temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.

⁴⁶ Section 985.03(18)(b), F.S., defines "supervised release detention" as temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters. Supervised release detention may include other requirements imposed by court.

⁴⁷ Section 985.24(1), F.S., Factors including but not limited to not appearing at a hearing and requests protection from imminent bodily harm.

⁴⁸ Section 985.26(1), F.S. The child has the right to be represented at this hearing or can waive the right under S. 985.033, F.S.

⁴⁹ Section 985.255(3), F.S.

⁵⁰ *Id.* Under s. 985.26(2), F.S., a 21-day limit applies to a detention order but may be held up to 30 days if the child is charged with what would be, if committed by an adult, a capital felony, a life felony, a first degree felony, or a second degree felony offense.

⁵¹ Section 985.435(2) and (3), F.S., give examples of what these components include.

⁵² See *Meeks v. State*, 754 So.2d 101, 103-104 (Fla. 1st DCA 2000); *Johnson v. State*, 678 So.2d 934, 934-935 (Fla. 3d DCA 1996).

⁵³ Section 985.439(4), F.S.

- Place the child on home detention with electronic monitoring;
- Modify or continue the child’s probation; or
- Revoke probation and commit the child to the DJJ.⁵⁴

Residential Commitment

The court may commit the child to a nonresidential or residential facility.⁵⁵ Commitment programs vary by “restrictiveness level,” defined in s. 985.03(44), F.S., as “the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children.” Levels of commitment are:

- Minimum-risk nonresidential where children remain in their community and participate at least 5 days a week in day treatment;
- Nonsecure residential where children are in a residential program and have supervised access to their community;
- High-risk residential where children are not allowed access to their community with limited exception; and
- Maximum-risk residential including juvenile correctional facilities or juvenile prisons that do not allow the children to have any access to their community.⁵⁶

If the court determines the child should be adjudicated delinquent and committed to the DJJ through court order,⁵⁷ the DJJ must recommend the restrictiveness level for the child. The court may commit the child at a different restrictiveness level but must set out findings for departure in the record based on a preponderance of the evidence.⁵⁸

Data on Offenses Committed by Juveniles

The DJJ reports that in FY 2019-20 12,224 youth between the ages of 7 and 14 years of age were referred to the DJJ for charges ranging from murder and kidnapping to armed robbery and sexual battery.⁵⁹ The most common of these offenses were misdemeanor assault/battery (19%), burglary (14%), felony aggravated assault/battery (11%), and petit theft (5%).⁶⁰ A total of 2,200 youth ages 7 years or older but younger than 15 years of age were admitted to secure detention.⁶¹

Interstate Compact on Juveniles

The Interstate Compact for Juveniles is an agreement amongst compacting states to be responsible for the safe return of juveniles who are on probation or parole and who have absconded, escaped, or run away from supervision and control.⁶² The Governor must execute an interstate compact for juveniles on behalf of Florida with any other state who joins the

⁵⁴ Section 985.439(4)(d), F.S.

⁵⁵ Section 985.441, F.S.

⁵⁶ Section 985.03(44), F.S. Florida law caps the number of beds at maximum-risk residential facilities at 90 beds.

⁵⁷ Section 985.441(1), F.S.

⁵⁸ Section 985.441(2), F.S.

⁵⁹ DJJ Analysis at p. 3.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Interstate Commission for Juveniles (ICJ), *The Interstate Compact for Juveniles*, p. 1, available at <https://www.juvenilecompact.org/sites/default/files/ICJRevisedLanguage.pdf> (last visited February 10, 2021).

compact.⁶³ The compact does not limit the Legislature’s ability to determine policy regarding juvenile offenders and non-offenders within Florida,⁶⁴ or restrict the definition of juvenile by age limit.⁶⁵

Forcible Felony Offenses

Section 776.08, F.S., defines “forcible felony” to mean:

- Treason;⁶⁶
- Murder;⁶⁷
- Manslaughter;⁶⁸
- Sexual battery;⁶⁹
- Carjacking;⁷⁰
- Home-invasion robbery;⁷¹
- Robbery;⁷²
- Burglary;⁷³
- Arson;⁷⁴
- Kidnapping;⁷⁵
- Aggravated assault;⁷⁶
- Aggravated battery;⁷⁷
- Aggravated stalking;⁷⁸
- Aircraft piracy;⁷⁹
- Unlawful throwing, placing, or discharging of a destructive device or bomb;⁸⁰ and
- Any other felony which involves the use or threat of physical force or violence against any individual.

III. Effect of Proposed Changes:

The bill provides that the act may be cited as the “Kaia Rolle Act.”

⁶³ See s. 985.802, F.S.

⁶⁴ *Id.*

⁶⁵ ICJ, *ICJ Rules, Interstate Commission for Juveniles, Serving Juveniles While Protecting Communities*, p. 6, (April 23, 2020), available at https://www.juvenilecompact.org/sites/default/files/ICJ%20Rules_Final.pdf (last visited February 9, 2021).

⁶⁶ Section 876.32, F.S.

⁶⁷ Section 782.04, F.S.

⁶⁸ Section 782.07(1), F.S.

⁶⁹ Section 794.011, F.S.

⁷⁰ Section 812.133, F.S.

⁷¹ Section 812.135, F.S.

⁷² Section 812.13, F.S.

⁷³ Section 810.02, F.S.

⁷⁴ Section 806.01, F.S.

⁷⁵ Section 787.01, F.S.

⁷⁶ Section 784.021, F.S.

⁷⁷ Section 784.045, F.S.

⁷⁸ Section 784.048, F.S.

⁷⁹ Section 860.016, F.S.

⁸⁰ Section 790.1615, F.S.

The bill creates s. 985.031, F.S., prohibiting a child who is under the age of 7 from being arrested, charged, or adjudicated delinquent except if the child commits a forcible felony as defined in s. 776.08, F.S.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill prohibits a child under the age of 7 from being arrested, charged with a violation of the law, or adjudicated delinquent except in specified circumstances which may result in indeterminate reduction of local fund expenditures for costs relating to criminal prosecution and confinement if such child would have otherwise been detained or charged with a crime. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal law and are therefore exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

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

The Florida Department of Law Enforcement (FDLE) will be required to amend basic recruit and advanced training course curriculums in relation to the new custody and detention laws which may be incorporated in annual training review courses.⁸¹

The Justice Administrative Commission (JAC) reports that the bill will have no policy, workload, or fiscal impacts on the agency.⁸²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 985.031 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 2, 2021:

The committee substitute provides an:

- Age limitation related to arresting, charging, or adjudicating delinquent a child; and
- Exception for if the child is alleged to have committed a specified offense.

- B. **Amendments:**

None.

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

⁸¹ The FDLE, *Agency Analysis for 626*, p. 5, January 20, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁸² The JAC, *Memorandum No. 13-21, Exec*, p.1, February 8, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).