

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: CS/SB 638

INTRODUCER: Criminal Justice Committee and Senator Powell

SUBJECT: Direct Filing of an Information

DATE: February 17, 2021 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 638 amends s. 985.265, F.S., providing that a child who is treated as an adult for purposes of prosecution in criminal court may not be housed in a jail or other facility intended for the detention of adults unless the court holds a hearing and makes findings, based on specified criteria, that the child should be prosecuted as an adult. Additionally, the bill permits the transfer of a child to a jail or other adult facility when the child has been charged as an adult and waives his or her right to the due process evidentiary hearing that is established in the bill.

Additionally, the bill amends s. 985.557, F.S., to remove the state attorney's judgement and discretion in determining whether public interest requires that a child be treated as an adult. The bill provides that a child who is 14 or 15 years of age during the commission of the crime may only be treated as an adult for the commission of, or attempt to commit specified crimes, but not for the conspiracy to commit a crime. A child who is 16 or 17 years of age during the commission of the crime, may not be treated as an adult for a misdemeanor unless the child has at least two previous adjudications.

The bill further amends s. 985.557, F.S., and requires the court, upon the state's filing of an information transferring a child to adult court, to advise the child and his or her parent or guardian that the child has the right to an evidentiary hearing and that the child may request such hearing. After such request, the court must hold a hearing within 30 days, and consider specified criteria in making a determination. The adult court must retain jurisdiction unless the court finds

the evidence supports returning the child to juvenile court. The order entered by the court is subject to interlocutory appeal.

The bill may have an indeterminate fiscal impact on the Department of Juvenile Justice (DJJ) and courts. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Detention of Children in Florida

A child is entitled to a hearing within 24 hours of being taken into custody or placed in detention care. At the hearing, the court may order continued detention care under certain circumstances.¹ “Detention care” means “the temporary care of a child in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order.”² There are two types of detention care, including:

- “Secure detention” which is the temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- “Supervised release detention” which is the temporary, nonsecure custody of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.³

Generally, a child may not be held in detention care for more than 21 days, unless an adjudicatory hearing for the case has been commenced in good faith by the court. The court may extend the length of detention for an additional 9 days if the child is charged with certain offenses, and there is good cause shown that the nature of the charge requires additional time for the prosecution or defense of the case. Additionally, a prolific juvenile⁴ offender must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.⁵

Cost Sharing of Detention Care

Cost sharing is governed by s. 985.6865, F.S., which provides, notwithstanding s. 985.686, F.S., each fiscal year, every county that is not fiscally constrained⁶ and that has dismissed any action

¹ Section 985.255(1), F.S.

² Section 985.03(18), F.S.

³ *Id.*

⁴ Section 985.255, F.S., provides that a “prolific juvenile offender” means a child that is charged with a delinquent act that would be a felony if committed by an adult, has a prior adjudication or adjudication withheld for a delinquent act that would be a felony if committed by an adult, and has 5 or more arrests, adjudications, or adjudications withheld, 3 of which must have been felony offenses.

⁵ Section 985.26, F.S.

⁶ Section 985.6865(3)(b), F.S., defines “fiscally constrained county” as a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than

or claim described in s. 985.6865(2), F.S.,⁷ must pay 50 percent of the total shared detention cost.⁸

The DJJ calculates a county's annual percentage share by dividing the total number of detention days for children residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for children in all non-fiscally constrained counties. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.⁹

Counties that are required to pay their share of detention costs must incorporate sufficient funds to pay its share of detention costs into its annual budget.¹⁰ Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.¹¹ The DJJ will determine quarterly whether counties are complying with this section.¹²

The State must pay all costs of detention care for children:

- Residing in a fiscally constrained county.
- Residing out of State.
- Housed in state detention centers from counties that provide their own detention care for children.¹³

Transfer of a Child to Adult Court

There are three methods of transferring a child to adult court for prosecution: judicial waiver,¹⁴ indictment,¹⁵ or direct filing an information.¹⁶

Direct File

Direct file describes the process whereby a state attorney files an information charging a child in adult court. Pursuant to s. 985.557, F.S., the decision to direct file is left to the discretion of the state attorney and does not require the court's approval. Direct file is the predominant transfer

\$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

⁷ Various counties and the DJJ have engaged in a multitude of legal proceedings, including administrative or judicial claims, regarding detention cost sharing for juveniles. Such litigation has largely focused on how the DJJ calculates the detention costs that the counties are responsible for paying, leading to the overbilling of counties for a period of years. Section 985.6865(1) and (2), F.S.

⁸ Section 985.6865(4), F.S.

⁹ *Id.*

¹⁰ Section 985.6865(6), F.S.

¹¹ Section 985.6865(7), F.S.

¹² Section 985.6865(8), F.S.

¹³ Section 985.6865(5), F.S.

¹⁴ 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.

¹⁵ 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.

¹⁶ Section 985.557, F.S.

method to adult court, accounting for 98.4 percent (788 children) of the transfers in FY 2019-20.¹⁷

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney has discretion to file a case in adult court for specified crimes when he or she believes that the public interest requires 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 at the time of the alleged offense and is 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
 - 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.¹⁸
- 16 or 17 years of age and is charged with any felony offense;¹⁹ or
- 16 or 17 years of age and is charged with a misdemeanor, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.²⁰

¹⁷ Department of Juvenile Justice, *2021 Legislative Bill Analysis for SB 638*, (February 10, 2021), p. 2., (on file with the Senate Committee on Criminal Justice).

¹⁸ Section 985.557(1)(a), F.S.

¹⁹ Section 985.557(1)(b), F.S.

²⁰ *Id.*

A child who has been transferred to adult court pursuant to an information and is found to have committed a violation of state law or a lesser included offense must be treated as an adult in every respect for any subsequent offense, unless the court imposed juvenile sanctions under s. 985.565, F.S.²¹

Children Transferred to Adult Facilities

Section 985.265(5), F.S., provides when a child may be held in a jail or other adult facility. Children must be housed separately from adult inmates to prohibit regular contact²² with incarcerated adults. A child must be transferred to an adult jail or other adult facility when he or she:

- Has been transferred or indicted for criminal prosecution as an adult.
 - Except when the child is charged with only a misdemeanor and is being transferred to adult court pursuant to the waiver or direct file process, in which case he or she may not be held in an adult facility, but may be held temporarily in a juvenile detention facility.
- Is wanted by another jurisdiction for prosecution as an adult.²³

A child who is transferred to a jail or adult facility must be housed separately from adult inmates to prevent a child from having regular contact with incarcerated adults. Supervision and monitoring of children includes physical observation and documented checks at least every 10 minutes. While multiple children may be placed in the same cell, a child may not be placed in a cell with an adult.²⁴

III. Effect of Proposed Changes:

The bill amends s. 985.265, F.S., providing that a child who is treated as an adult for purposes of prosecution in criminal court may not be housed in a jail or other facility intended for the detention of adults unless the court holds a hearing and makes findings, based on specified criteria, that the child should be prosecuted as an adult. Additionally, the bill permits the transfer of a child to a jail or other adult facility when the child has been charged as an adult and waives his or her right to the due process evidentiary hearing that is established in the bill.

Additionally, the bill amends s. 985.557, F.S., to remove the state attorney's *judgement and discretion* in determining whether public interest requires that a child be treated as an adult. The bill provides that a child who is 14 or 15 years of age during the commission of the crime may only be treated as an adult for the commission of, or attempt to commit specified crimes, but not for the conspiracy to commit a crime. A child who is 16 or 17 years of age during the commission of the crime, may not be treated as an adult for a misdemeanor unless the child has at least two previous adjudications. The bill removes current language that permits a child who is 16 or 17 years of age during the commission of the crime from being treated as an adult for a misdemeanor when he or she has only prior *adjudications withheld*.

²¹ Section 985.557(2)(a), F.S.

²² Section 985.265(5), F.S., defines "regular contact" as sight and sound contact.

²³ Section 985.265(5), F.S.

²⁴ Section 985.265(5), F.S.

The bill further amends s. 985.557, F.S., and requires the court, upon the state's filing of an information transferring a child to adult court, to advise the child and his or her parent or guardian that the child has the right to an evidentiary hearing and that the child may request such hearing. After such request, the court must hold a hearing within 30 days, and consider specified criteria to determine whether it is necessary for the community's protection to prosecute the child in adult court. The court must consider the following:

- Evaluations and assessments completed by the Department of Juvenile Justice (DJJ).
- The sophistication and maturity of the child, including:
 - The effect, if any, of immaturity, impetuosity, or failure to appreciate risk and consequences of the child's participation in the alleged offense.
 - The child's age, maturity, intellectual capacity, and mental and emotional health at the time of the alleged offense.
 - The effect, if any, of characteristics attributable to the child's youth on the child's judgment.
- The record and previous history of the child, including:
 - Previous contacts with the DJJ, the Department of Corrections (DOC), the Department of Children and Families, other law enforcement agencies, and the courts.
 - Prior periods of probation.
 - Prior adjudications that the child committed a delinquent act or violation of the law, with greater weight being given if a court previously found that the child committed a delinquent act or violation of the law involving violence to persons.
 - Prior commitments to institutions of the DJJ, the DOC, or agencies under contract with either department.
 - Any history of trauma, abuse or neglect, foster care placements, failed adoption, fetal alcohol syndrome, exposure to controlled substances at birth, or below-average intellectual functioning.
 - Identification of the child as a student requiring exceptional student education or having previously received psychological services.
- The nature of the alleged offense and the child's participation in it, including:
 - Whether the alleged offense is punishable by death or life imprisonment.
 - Whether the alleged offense was against persons or property.
 - Whether the alleged offense is alleged to have been committed in an aggressive, violent, or premeditated manner.
 - The extent of the child's participation in the alleged offense.
 - The effect, if any, of familial pressure or peer pressure on the child's actions.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense:
 - By the use of procedures, services, and facilities currently available to the juvenile court.
 - By the use of procedures, services, and facilities currently available to the adult court, including whether the Criminal Punishment Code is a nonstate prison sanction.
- Whether the child could obtain habilitative or rehabilitative services available in the juvenile justice system.
- Whether the child could receive a sentence in juvenile court which would provide adequate safety and protection for the community.
- Whether the child's best interests would be served by prosecuting the child in juvenile court.

Additionally, the court may consider any reports²⁵ that may assist the court. The child, the child's parent or guardian, defense counsel, and the state attorney may examine these reports and, at the hearing, question the parties responsible for creating them.

The adult court must retain jurisdiction unless the court finds the evidence supports returning the child to juvenile court. The court must render an order with specific findings of fact and the reasons for its decision. The order entered by the court is subject to interlocutory appeal.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill relates to the housing of children who have been transferred or indicted for criminal prosecution as an adult, and criminal laws are exempt from the requirements of Article VII, Section 18 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.

²⁵ The judge may consider any reports that may assist the court, including prior predisposition reports, psychosocial assessments, individual educational plans, developmental assessments, school records, abuse or neglect reports, home studies, protective investigations, and psychological and psychiatric evaluations.

C. Government Sector Impact:

The DJJ has indicated that this bill will have an indeterminate fiscal impact.²⁶ The DJJ is estimating that the detention cost to implement this bill is \$3,325,129 for the state. In accordance with the Detention Cost Share, all non-fiscally constrained counties will pay for half of their respective detention cost. Half of this cost for local counties would total up to \$1,662,565. The entire half would not be covered due to the fiscally constrained counties. Detention Cost Share is a reimbursement system, meaning the entire \$3,325,129 would need to be allocated to the DJJ in year one and \$1,662,565 allocated to the DJJ in the following years for Detention staff increases.²⁷

The bill may also have an indeterminate fiscal impact on the courts due to the requirement that the court hold a hearing within 30 days to determine whether it is necessary for the community's protection that the child be prosecuted in adult court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.265 and 985.557.

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 Criminal Justice on February 16, 2021:

The committee substitute permits the transfer of a child to a jail or other adult facility when he or she has been charged as an adult and waives his or her right to the due process evidentiary hearing that is established in the bill.

B. Amendments:

None.

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

²⁶ Department of Juvenile Justice, *2021 Legislative Bill Analysis for SB 638*, (February 10, 2021), p. 2. (on file with the Senate Committee on Criminal Justice).

²⁷ *Id.* at 5-6.