

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 640

INTRODUCER: Criminal Justice Committee and Senators Powell and Farmer

SUBJECT: Prosecuting Children as Adults

DATE: March 16, 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 640 amends s. 985.556, F.S., to remove involuntary mandatory waiver from the ways in which a child may be transferred to adult court. Section 985.556(3), F.S., relating to involuntary mandatory waiver, provides under what circumstances a state attorney must request the court to transfer a child to adult court.

This bill amends s. 985.557, F.S., to remove the discretionary direct filing of a child 14 or 15 years of age. Additionally, this bill provides that the state attorney may only direct file an information on a child 16 or 17 years of age when the offense committed was a forcible felony, as defined in s. 776.08, F.S. The bill renames “discretionary direct file” to “discretionary prosecution of children as adults.”

This bill amends s. 985.56, F.S., providing that only a child 14 years of age or older who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the juvenile court unless and until an indictment on the charge is returned by the grand jury. Additionally, the bill provides that a child who commits an offense for which he or she may be indicted and who has a pending competency hearing or previously has been found incompetent and has not been restored may not be transferred to adult court until competency is restored. A pending competency hearing or finding of incompetency tolls the time limitation for the adjudicatory hearing.

Further, this bill amends s. 985.56, F.S., removing the requirement that a child who has committed an offense punishable by death or by life imprisonment be sentenced as an adult pursuant to s. 985.565, F.S. Under this bill, a child who has committed such an offense may be sentenced as an adult or juvenile.

The bill amends s. 985.565, F.S., to give the court discretion to sentence a child who has been indicted as an adult or juvenile. Additionally, the bill amends this section to make conforming changes.

The bill amends s. 985.03 F.S., to include or remove the appropriate cross-references.

The bill reenacts ss. 985.265, 985.15, and 985.26, F.S., for purposes of incorporating the amendments made by this act.

This bill has an indeterminate fiscal impact on the Department of Juvenile Justice (DJJ). See Section V. Fiscal Impact Statement.

This 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

¹ Section 985.255(1), F.S.

² Section 985.03(18), F.S.

³ *Id.*

the prosecution or defense of the case.⁴ Additionally, a prolific juvenile⁵ offender must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.⁶

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 constrained⁷ and that has dismissed any action or claim described in s. 985.6865(2), F.S.,⁸ must pay 50 percent of the total shared detention cost.⁹

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.¹⁰

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.¹¹ Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.¹² The DJJ will determine quarterly whether counties are complying with this section.¹³

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.¹⁴

⁴ Section 985.26, F.S.

⁵ 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.

⁶ Section 985.26, F.S.

⁷ 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 \$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.

⁸ 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.

⁹ Section 985.6865(4), F.S.

¹⁰ *Id.*

¹¹ Section 985.6865(6), F.S.

¹² Section 985.6865(7), F.S.

¹³ Section 985.6865(8), F.S.

¹⁴ Section 985.6865(5), F.S.

Transfer of a Child to Adult Court

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

Direct file is the most common way that children are transferred to adult court. During FY 2019-20, there were 4 voluntary waivers, 5 involuntary waivers, 4 indictments, and 788 direct files.¹⁷

Judicial Waiver

“Judicial waiver” occurs when a child or a state attorney requests the juvenile court to transfer a child to adult court. There are three types of judicial waiver: voluntary, involuntary *discretionary* waiver, and involuntary *mandatory* waiver.¹⁸

Voluntary Waiver

The court must transfer a child’s case to adult court if the child, joined by a parent or guardian ad litem, demands to be tried as an adult. This demand must be made in writing and prior to an adjudicatory hearing.¹⁹

Involuntary Discretionary Waiver

Section 985.556(2), F.S., provides that the state attorney may file a motion requesting the court to transfer the child to adult court if the child was 14 years of age or older at the time of the offense.²⁰ Involuntary discretionary waiver may be filed for any offense.

Involuntary Mandatory Waiver

Section 985.556(3), F.S., provides that the state attorney must request the court transfer a child to adult court, or provide written reasons to the court for not making such request, or proceed under discretionary direct file, if the child was 14 years of age or older:

- And has been previously adjudicated delinquent 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;²¹ or
- At the time of commission of a fourth or subsequent alleged felony offense, and the child was previously adjudicated delinquent or had adjudication withheld for the commission of, attempted commission of, or conspiracy to commit three felony offenses, and at least one of such offenses involved the use or possession of a firearm or violence against a person.²²

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 Sections 985.556, 985.56, and 985.557, F.S.

¹⁷ Department of Juvenile Justice, *2021 Legislative Bill Analysis for SB 640*, p. 2., (March 3, 2021) (on file with the Senate Committee on Criminal Justice).

¹⁸ Section 985.556, F.S.

¹⁹ Section 985.556(1), F.S.

²⁰ Section 985.556(2), F.S.

²¹ Section 985.556(3)(a), F.S.

²² Section 985.556(3)(b), F.S.

The court must either transfer a child to adult court upon the state attorney's request, or provide written reasons for not transferring the child.²³

Waiver Hearing

The state attorney may file a motion requesting the court to transfer the child to adult court within 7 days (excluding Saturdays, Sundays, and legal holidays) after the date of filing the petition. The state attorney may file such motion at a later time with court approval, but this must occur before an adjudicatory hearing and after considering the recommendation of the juvenile probation officer.²⁴

The court must conduct a hearing on all transfer request motions to determine whether a child should be transferred. The court should consider the following in making its determination:

- The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child for adult sanctions.
- Whether the alleged offense was committed in an aggressive, violent, premediated, or willful manner.
- Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
- The probable cause as found in the report, affidavit, or complaint.
- The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults.
- The sophistication and maturity of the child.
- The record and previous history of the child.²⁵
- 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 court.²⁶

A study and written report from the DJJ must be completed prior to the hearing. The child, the child's parents or legal guardians, defense counsel and the state attorney have the right to examine the report and question the parties responsible for them at the hearing.²⁷ The court must render a written order including specific findings of fact and the reason for a decision to transfer to adult court. Once a child is transferred to adult court pursuant to an involuntary waiver hearing and has been found to have committed the presenting offense or a lesser included offense, the

²³ Section 985.556(3), F.S.

²⁴ Section 985.556(4)(a), F.S.

²⁵ Section 985.556(4)(a)-(d), F.S., provides that the record and previous history of the child includes: previous contacts with the DJJ, the Department of Corrections, the former Department of Health and Rehabilitative Services, the Department of Children and Families, other law enforcement agencies, and courts; prior periods of probation; prior adjudications that the child committed a delinquent act or violation of law, greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving an offense classified as a felony or has twice previously been found to have committed a delinquent act or violation of law involving an offense classified as a misdemeanor; and prior commitments to institutions.

²⁶ Section 985.556(4)(c), F.S.

²⁷ Section 985.556(4)(d), F.S.

child must thereafter be handled in every respect as an adult for any subsequent violation of law, unless the court imposes juvenile sanctions.²⁸

Indictment

A child of any age who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the juvenile court unless and until an indictment on the charge is returned by the grand jury. When an indictment is returned, the petition for delinquency must be dismissed and the child must be tried and handled in every respect as an adult:

- On the offense punishable by death or by life imprisonment; and
- On 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 by life imprisonment; or
 - One or more acts or transactions connected with the offense punishable by death or by life imprisonment.²⁹

An adjudicatory hearing generally may not be held for 21 days after a child is taken into custody and charged with having committed an indictable offense. However, this time limitation does not apply if the state attorney advises the court in writing that he or she does not intend to present the case to the grand jury, or has presented the case to the grand jury and the grand jury has not returned an indictment. If the court receives such notice, or the grand jury fails to act within the 21 day period, the court may proceed as otherwise authorized.³⁰

Once a child has been indicted, the court must transfer all of the child's felony cases that have not resulted in a plea of guilty or no contest, or a finding of guilt, to adult court. If the child is acquitted of all indicted offenses and lesser included offenses contained in the indictment, all felony cases that were transferred to adult court are subject to the same penalties they were subject to prior to the transfer to adult court.³¹

The child must be sentenced as an adult if he or she is found to have committed an indictable offense. If the child is not found 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 a part of the criminal episode, the court may sentence the child to juvenile sanctions under s. 985.565, F.S.³²

Once a child has been found to have committed any offense for which he or she was indicted, the child must be handled in every respect as an adult for any subsequent violation of state law, unless the court imposed juvenile sanctions.³³

²⁸ Section 985.556(5)(b), F.S.

²⁹ Section 985.56(1)(a) and (b), F.S.

³⁰ Section 985.56(2), F.S.

³¹ Section 985.56(4), F.S.

³² Section 985.56(3), F.S.

³³ Section 985.56(4), F.S.

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.

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.³⁴
- 16 or 17 years of age and is charged with any felony offense;³⁵ 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.³⁶

³⁴ Section 985.557(1)(a), F.S.

³⁵ Section 985.557(1)(b), F.S.

³⁶ *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.³⁷

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 contact³⁸ 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.³⁹

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.⁴⁰

Juvenile Sanctions and Procedures vs. Adult Criminal Court

There are significant differences between juvenile court and the adult court:

- An adjudication of delinquency is not a conviction, and a delinquent child is not considered a criminal.
 - Adjudication by the juvenile court does not impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction, or disqualify or prejudice the child in any civil service application or appointment, with limited exceptions.⁴¹
- Most judicial records of children are exempt from public disclosure, unlike adult judicial records.⁴² However, certain criminal history information relating to children who have been charged with a felony offense is not confidential and exempt.⁴³
- Children accused of crimes are released unless detention is warranted.⁴⁴ There is no bail in the juvenile system.

³⁷ Section 985.557(2)(a), F.S.

³⁸ Section 985.265(5), F.S., defines “regular contact” as sight and sound contact.

³⁹ Section 985.265(5), F.S.

⁴⁰ Section 985.265(5), F.S.

⁴¹ 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.

⁴² Section 985.045(2), F.S.

⁴³ Section 985.04(2), F.S.

⁴⁴ Sections 985.115, 985.255, and 985.26, F.S.

- Children are tried before a circuit judge. There is no right to a jury trial.
- The court may, where permitted by law, commit a child to a residential program.⁴⁵ The residential program risk levels include, minimum-risk residential, nonsecure residential, high-risk residential, and maximum-risk residential programs.⁴⁶ Those sentenced in adult court may be sentenced to jail or prison for a term up to that allowed by statute.
- The court does not retain jurisdiction over a child past the age 21.⁴⁷ Jurisdiction over offenders in adult court extend up to life.

Forcible Felony

A forcible felony includes:

- 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.⁴⁸

Competency

A child is competent to proceed if he or she has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings.⁴⁹ A child may be found incompetent due to mental illness, or intellectual disability or autism.⁵⁰ If the court has reason to believe a child may be incompetent to proceed, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.⁵¹

⁴⁵ Section 985.441, F.S.

⁴⁶ Section 985.03(44), F.S.

⁴⁷ 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.

⁴⁸ Section 776.08, F.S.

⁴⁹ Section 985.19(1)(f), F.S.

⁵⁰ Section 985.19(1)(d) and (e), F.S.

⁵¹ Section 985.19(1), F.S.

The expert's evaluation and report must address the child's capacity to:

- Appreciate the charges or allegations against the child.
- Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable.
- Understand the adversarial nature of the legal process.
- Disclose to counsel facts pertinent to the proceedings at issue.
- Display appropriate courtroom behavior.
- Testify relevantly.⁵²

III. Effect of Proposed Changes:

This bill amends s. 985.556, F.S., to remove involuntary mandatory waiver from the ways in which a child may be transferred to adult court. Section 985.556(3), F.S., relating to involuntary mandatory waiver, provides under what circumstances a state attorney must request the court to transfer a child to adult court.

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This bill amends s. 985.56, F.S., providing that only a child 14 years of age or older who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the juvenile court unless and until an indictment on the charge is returned by the grand jury. Additionally, the bill provides that a child who commits an offense for which he or she may be indicted and who has a pending competency hearing or previously has been found incompetent and has not been restored may not be transferred to adult court until competency is restored. A pending competency hearing or finding of incompetency tolls the time limitation for the adjudicatory hearing.

Further, this bill amends s. 985.56, F.S., removing the requirement that a child who has committed an offense punishable by death or by life imprisonment be sentenced as an adult pursuant to s. 985.565, F.S. Under this bill, a child who has committed such an offense may be sentenced as an adult or juvenile.

The bill amends s. 985.565, F.S., to give the court discretion to sentence a child who has been indicted as an adult or juvenile. Additionally, the bill amends this section to make conforming changes.

The bill amends s. 985.03 F.S., to include or remove the appropriate cross-references.

The bill reenacts ss. 985.265, 985.15, and 985.26, F.S., for purposes of incorporating the amendments made by this act.

⁵² Section 985.19(1)(f)1.-6., F.S.

This bill is effective July 1, 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DJJ states that the bill will have an indeterminate fiscal impact on the department. In accordance with the Detention Cost Share, all non-fiscally constrained counties pay for half of their prior year actual detention costs. More youth being detained in juvenile secure detention would mean a higher cost to the counties to pay for their detention care.⁵³

Using adult transfer numbers from FY 2019-20, the DJJ determined that 286 children would not have been eligible for adult transfer via direct file under the new language. Children who are not transferred to adult court will impose a financial cost on the DJJ.

⁵³ The Department of Juvenile Justice, *2021 Legislative Bill Analysis for SB 640*, (March 3, 2021), p. 5., (on file with the Senate Committee on Criminal Justice).

These costs include but are not limited to detention cost, transportation cost, evaluations, and treatment cost.⁵⁴

The DJJ estimates the pre-adjudicatory Variable Detention Cost total to be \$363,543.18.

The DJJ estimates the post-adjudicatory cost to be:

- \$159,315 per youth in Max Risk Residential.
- \$85,709 per youth in High Risk Residential.
- \$51,067 per youth in Nonsecure Residential.
- \$17,751 per youth in Day Treatment Probation.⁵⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of Florida Statutes: 985.03, 985.556, 985.557, 985.56, and 985.565.

The bill reenacts the following sections of the Florida Statutes: 985.15, 985.26, and 985.265.

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 March 16, 2021:

The committee substitute replaces the term “violent felony,” with “forcible felony, as defined in s. 776.08.” Additionally, the committee substitute replaces the term “shall,” with “may,” to give courts discretion to sentence a child who has been indicted as an adult or juvenile.

- B. **Amendments:**

None.

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

⁵⁴ *Id.* at 5.

⁵⁵ *Id.* at 6.