

Section-by-Section Explanation of HB 509 (Direct File Reform Bill)

Section 1 (Lines 81-88): Preservation of Civil Rights

Under current law, anyone, whether an adult or a juvenile, who receives a felony conviction loses their civil rights, i.e., the right to vote, to serve on a jury, or to hold public office, for life. This provision would make it so that a juvenile who is prosecuted as an adult for a crime committed while he was a child does not lose these civil rights as a result of the felony conviction.

Section 2 (Lines 92-221): Waiver of Juvenile Court Jurisdiction

Under current law there are three ways that a child can be transferred to adult court for prosecution as an adult: indictment, direct file, or waiver. This section deals with waiver. In the current system, the juvenile court has jurisdiction over anyone under the age of 18 who breaks the law. If a state attorney wants to prosecute a child as an adult, he or she can ask the juvenile court to waive its jurisdiction over the child and to transfer the child to the adult court. This request is rarely made today because state attorneys also have the power to direct file the child without the involvement of any court. As would be expected, 98% of adult transfers happen through direct file presumably out of expediency. Before direct file was created in the 1990s, all adult transfers happened through the waiver process.

This section makes two changes to the waiver process. First, it eliminates involuntary mandatory waiver which requires the state attorney to request that the juvenile court request that the juvenile court waive its jurisdiction in certain circumstances. Current law actually reduces state attorney discretion and forces adult transfer. Second, this section makes minor changes to the factors that the juvenile court judge must consider in deciding whether to waive its jurisdiction over the child.

Section 3 (Lines 224-506): Prosecuting Children as Adults (a/k/a Direct File)

Under current law, nearly all (98%) prosecutions of children as adults happen pursuant to the direct file statute. This law gives prosecutors unilateral and unfettered discretion to prosecute a child as an adult. Florida is one of only three states that afford a prosecutor sole discretion to make this decision without input from DJJ or a judge.

Discretionary Direct File of 14 and 15 year olds (Lines 226-265)

Under current law, 14 and 15 year olds are eligible for prosecution as adults (direct file) if they commit one of 19 enumerated felony offenses. In Fiscal Year 2015-2016, there were no kids under the age of 14 who were direct filed. There were 20 kids who were 14 years old that were prosecuted as adults. There were 67 kids who were 15 years olds that were prosecuted as adults.

The vast majority of these kids were sentenced to adult probation begging the question why they were prosecuted as adults in the first place and saddled with a felony conviction.

This provision would eliminate discretionary direct file for 14 and 15 year olds. These kids would still be eligible for prosecution as adults under the indictment and waiver provisions or they could remain in the juvenile justice system and be held accountable there. This actually makes more sense because if they remain in the DJJ system they are more likely to get rehabilitative services and interventions than if they are sent to the adult system where most of them get adult probation and no rehabilitative services. The recidivism rates for kids in the DJJ system are also much better than for kids sent to the adult system.

Discretionary Direct File of 16 and 17 year olds (Lines 226-265 & 307-316)

Under current law, 16 and 17 year olds are eligible for prosecution as adults (direct file) if they commit any felony.

This provision would limit discretionary direct file for 16 and 17 year olds to only the felonies that are currently applicable to 14 and 15 year olds. It also eliminates grand theft from the list of direct file eligible offenses. 16 and 17 year olds would still be eligible for prosecution as adults under the indictment and waiver provisions.

Data Collection on Discretionary Direct File of 16 and 17 year olds (Lines 266-306)

We currently know through anecdotal evidence that prosecutors sometimes threaten kids with direct file in order to secure plea agreements that keep kids in the DJJ system but put them deeper in the system in residential commitments that DJJ recommends. This has the effect of giving some kids an overdose of intervention and causes them to take up bed space that should be used for kids that actually need higher levels of intervention, contributing to the waiting list for DJJ beds.

This provision would require prosecutors and public defenders to work together in conjunction with the court to collect data on the plea process and plea agreements. This is a transparency provision.

Mandatory Direct File (Lines 317-387)

Under current law, there are certain circumstances in which a state attorney must prosecute a child as an adult. In these cases even the state attorney has no discretion as to whether to prosecute the child as an adult, it is a statutory requirement. According to a 2017 OPPAGA report, one third of all direct files occur under the mandatory direct file provision and that number has been increasing over the past five years.

This provision eliminates mandatory direct file and leaves the decision to prosecute these children as adults with the state attorney under the discretionary direct file provision, waiver, or indictment.

Fitness Hearing Before a Judge (Lines 420-431)

Under current law, the state attorney has unilateral, unfettered discretion to prosecute a child as an adult. This decision is not reviewable by a judge. Florida is one of only three states that gives prosecutors alone this power.

This provision would allow a child that has been transferred to adult court for prosecution as an adult to make a motion to the adult court judge asking him or her to return the child to the juvenile court. The provision sets forth things for the court to consider in deciding the request.

Prohibition on Transferring Incompetent Children (Lines 432-437)

Under current law there is no explicit prohibition on the prosecution of a child who has been found to be incompetent being transferred to adult court.

This provision would make it clear that a child that has been found to be incompetent may not be transferred to adult court for criminal prosecution.

Additional Data Collection (Lines 438-503)

Under current law, some data about children who are prosecuted as adults is collected, but according to a 2017 OPPAGA report, additional data needs to be collected.

This provision requires DJJ to collect additional data on what children are being prosecuted as adults and instructs OPPAGA to produce a report. This is a transparency provision.

Section 4 (Line 510-565): Indictment of Juveniles

Under current law, a child of any age who commits a violation of state law that is punishable by death or by life imprisonment can be prosecuted as an adult if he or she is indicted by a grand jury. There is no minimum age limit for indictment. There is evidence that children as young as 10 years old have been indicted for conduct going back to when the child was 8 years old.

This section would set a minimum age of 14 years old for indictment. It would also make clear that an incompetent child may not be indicted.

Section 5 (Lines 569-712): Sentencing

Under current law in some circumstances a judge may impose juvenile or adult sanctions.

This section adds to the factors that the judge shall consider in determining whether to impose juvenile sanctions instead of adult sanctions.

Section 6 (Lines 716-717): Definitions

This section contains a conforming amendment.

Section 7 (Lines 721-742): Filing Decisions

This section contains a conforming amendment.

Section 8 (Lines 745-774): Detention Pending Trial as an Adult

Under current law, a court must order that a child that is being prosecuted as an adult be held in the adult jail pending trial. Adult jails are not equipped to house children who must by law be kept separated from adult prisoners in the jail. This means that children awaiting trial as adults are commonly held in solitary confinement. Children held in adult jails also receive little or no services, especially education to which they are legally entitled.

This section gives judges discretion on the decision where to house a child pending his or her trial.

Section 9 (Lines 779-784): Conforming Reenactment

Section 10 (Line 785): Effective Date

The act shall take effect July 1, 2018.