

STORAGE NAME: h0159s2.cj

DATE: April 24, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: CS/CS/HB 159

RELATING TO: Prosecution of Juveniles

SPONSOR(S): Committees on Criminal Justice Appropriations and Crime & Punishment, and Representative Kyle and others

TIED BILL(S): 1st Eng. SB 1548(S)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 4 NAYS 3
 - (2) CORRECTIONS (W/D)
 - (3) JUVENILE JUSTICE YEAS 11 NAYS 3
 - (4) CRIMINAL JUSTICE APPROPRIATIONS YEAS 6 NAYS 3
 - (5)
-

I. SUMMARY:

The bill requires the state attorney to prosecute as an adult any 16 or 17 year old offender who is charged with committing one of the qualifying offenses under the 10-20-Life Legislation (99-12, LOF) and who, while committing the offense, possessed or discharged a firearm or destructive device. Upon conviction, the bill requires such offenders to be sentenced to specified "10-20-Life" minimum mandatory prison terms, pursuant to s. 775.087(2)(a), F.S. Under the bill, neither juvenile sanctions nor youthful offender sentences are authorized for such offenders. The bill provides for an exception when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the child in adult court.

The bill requires the Department of Corrections to make every reasonable effort to separate any 16 or 17 year old convicted and sentenced under the bill from adult inmates.

The bill allows the Department of Corrections to use up to \$300,000 of appropriated funds for a public awareness campaign.

On March 16, 2000, the Criminal Justice Impact Conference determined the impact of Senate Bill 1548, the companion to CS/HB 159, on the inmate population to be insignificant.

The bill takes effect October 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

10-20-Life

Last year the Legislature passed CS/CS/HB 113 (Chapter Law 99-12), which was commonly referred to as "10-20-Life." The law amended s. 775.087, F.S., to provide increased minimum mandatory prison terms for offenders charged with committing enumerated felonies while armed with a firearm or destructive device. Under s. 775.087(2), F.S., any person who is convicted of committing or attempting to commit:

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated assault;
- g. Aggravated battery;
- h. Kidnaping;
- i. Escape;
- j. Aircraft piracy;
- k. Aggravated child abuse;
- l. Aggravated abuse of an elderly person or disabled adult;
- m. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- n. Carjacking;
- o. Home-invasion robbery;
- p. Aggravated stalking; or
- q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, or other violation of s. 893.135(1);

and who, during the commission of the offense, actually possessed a firearm or destructive device must be sentenced to a minimum term of imprisonment of 10 years, except that a person who is convicted for aggravated assault or burglary of a conveyance must be sentenced to a minimum term of imprisonment of 3 years.

If during the commission of any of these offenses the offender discharges the firearm or destructive device, a minimum 20 year prison sentence must be imposed. In cases where the discharge of the firearm or destructive device results in death or great bodily harm to another, a sentence of not less than 25 years, nor more than life imprisonment must be imposed. These minimum mandatory sentences do not prohibit a judge from imposing a greater sentence as authorized by law.

The 10 year minimum mandatory sentence does not apply if the offender simply possessed, but did not discharge, a firearm or destructive device while committing or attempting a burglary of a conveyance or an aggravated assault. However, the 20 and 25 year minimum mandatories do apply if the firearm or destructive device is actually discharged during any enumerated offense.

For purposes of imposing the minimum mandatory prison terms under "10-20-Life," s. 775.087(4), F.S., defines "possession" of a firearm as the carrying of the firearm on one's person. In the alternative, possession can be demonstrated by proof that the defendant had the firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the offense.

Section 775.087(2)(d), F.S., expresses the intent of the Legislature that the minimum mandatory sentences should be imposed for each qualifying count. The court is required to impose the minimum mandatory sentences consecutive to any other term of imprisonment imposed for any other felony offense.

Prosecution of Juvenile Offenders As Adults

Under current law, State Attorneys have discretion to direct file, or prosecute as an adult, any case involving a 16- or 17- year-old juvenile charged with a felony offense. However, s. 985.227(2)(a), F.S., requires State Attorneys to direct file any case involving a 16- or 17- year-old juvenile who is charged with a violent crime against a person and who has previously been adjudicated for committing, attempting to commit, or conspiring to commit murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery, or aggravated assault.

Adult Sentences For Juvenile Offenders Prosecuted as Adults

Section 985.233, F.S., describes the sentencing options that a court may impose on any juvenile who has been prosecuted as an adult. Under current law, the only instance in which a court must impose adult sanctions upon a juvenile offender prosecuted as adults, is when the offender has been indicted for a capital offense or an offense punishable by life, and subsequently is found to have committed the offense for which he or she was indicted. In all other instances, the court has the discretion to impose either an adult sentence or a juvenile sentence on any juvenile offender prosecuted as an adult. Under current law , a court may not impose a combination of juvenile sanctions and adult sanctions. As a result, the judge must decide whether to impose exclusively adult court sanctions (which includes youthful offender sanctions) or juvenile sanctions.

A. The Criminal Punishment Code

All non-capital felony offenders convicted in adult court are subject to sentencing under the Florida Criminal Punishment Code ("the Code") for offenses committed on or after October 1, 1998, pursuant to ss. 921.002 - 921.0026, F.S. The Code provides the minimum

sentence that a court may impose unless there is a statutory reason for a more lenient sentence, or downward departure. Under the Code, the minimum sentence is called the "lowest permissible sentence." The Code also provides the court with the discretion to impose a prison sentence up to the maximum sentence allowed by statute for each offense.

If the judge opts to impose adult sanctions upon a juvenile offender who has been prosecuted as an adult, and the adult sanctions require the imposition of a minimum mandatory prison sentence, the minimum mandatory prison sentence must be included in the juvenile offender's adult sentence. In situations where the judge seeks to avoid the imposition of the minimum mandatory prison sentence, the judge can impose either juvenile sanctions or, if the juvenile offender qualifies, a youthful offender sentence.

Pursuant to s. 985.417, F.S., when any child under the age of 18 is sentenced to the Department of Corrections, the Secretary of Juvenile Justice may transfer that child to a DJJ facility for the duration of sentence or until the child's 21st birthday. If the child attains his or her 21st birthday prior to the end of the child's sentence, the child is then transferred back to the Department of Corrections.

B. Youthful Offender Sanctions

Pursuant to s. 985.233(4), F.S., and s. 958.04, F.S., the court may sentence a juvenile who has been prosecuted as an adult to a youthful offender sentence if the juvenile has not previously been classified as a youthful offender and has not been found guilty of a capital or life felony. The total length of time a youthful offender sentence may last is six years, unless the offense is a third degree felony in which case the sentence can be for no more than five years. The maximum youthful offender sentence is 4 years incarceration followed by 2 years of community control, pursuant to s. 985.04(2)(c), F.S.

Juvenile Sanctions For Juveniles Prosecuted as Adults

If the court opts to impose juvenile sanctions on a juvenile prosecuted as an adult, the court must stay adjudication of guilt and adjudicate the child "delinquent." Upon adjudicating a child delinquent, the court may commit the child to the Department of Juvenile Justice ("DJJ") for placement in a juvenile community control program, or a juvenile commitment program.

C. EFFECT OF PROPOSED CHANGES:

The bill adds a new paragraph (d) to s. 985.227(2), F.S., which relates to the prosecution of juveniles as adults. The bill requires State Attorneys to direct file any 16- or 17- year-old juvenile offender who would otherwise qualify for a "10-20-Life" sentence under the circumstances described in s. 775.087(2)(a)1.a.-q., F.S. The bill also requires the imposition of the minimum mandatory prison terms provided under "10-20-Life" upon conviction of such juvenile offender. Under the bill, neither juvenile sanctions nor youthful offender sentences would be authorized for offenders prosecuted under the bill's provisions. The bill, however, provides an exception if the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the child in adult court. The bill provides that the Department of Corrections may use up to \$300,000 to carry out a public awareness campaign. The bill further requires that the department make every reasonable effort to separate any 16 or 17 year old sentenced under the bill from adult inmates.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On March 16, 2000, the Criminal Justice Impact Conference determined that the bill would have an insignificant impact on the inmate population.

The department of Juvenile Justice may experience a slight reduction in demand for commitment beds.

There is no information on file with the Criminal Justice Appropriations Committee from the State Attorneys, Public Defenders or the State Courts System. Since these cases are currently prosecuted through the courts, however, the anticipated impact is minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

E. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

F. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

G. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime and Punishment adopted a strike-everything amendment which substantially changed the substance of HB 159 as originally filed. Whereas HB 159 lowered the jurisdiction of juvenile court prosecution to age 15, the strike-everything amendment requires the imposition of the minimum mandatory prison terms of s. 775.087(2), F.S. ("10-20-Life") to qualifying juveniles ages 16 and 17.

Seven amendments to CS/HB 159 were favorably received by the Committee on Juvenile Justice. Amendment 1 and amendment 2 clarify that the bill is intended to apply to any 16- or 17-year-old offender who commits or attempts to commit the offenses enumerated in s. 775.087(2)(a)1.a.-q., F.S. Together, these amendments clarify that the mandatory minimum sentences are to be applied to qualifying juvenile offenders pursuant to the bill in the same manner that the mandatory minimum sentences are applied to adult offenders under current law. Amendment 3, as amended, provides funding for purposes of advertising the "Juvenile 10-20-Life" provisions. There is currently funding in the House budget to accommodate this amendment. The substitute amendment for amendment 5 limits the application of the bill to 16- and 17-year-old offenders who committed or attempted to commit an enumerated offense while possessing or using a firearm or destructive device and who also have previously been adjudicated delinquent or had adjudication withheld for an offense classified as a forcible felony. Amendment 7 clarifies that once a child is transferred to adult court pursuant to the provisions of the bill, that child must receive a mandatory minimum sentence if convicted. Amendment 9 provides discretion to the state attorney, in exceptional circumstances, to prosecute a child in juvenile court who otherwise qualifies for adult prosecution pursuant to the bill. Amendment 10 is technical in nature, clarifying that a new paragraph (d) is added to subsection (2) of s. 985.227, F.S.

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The Criminal Justice Appropriations Committee adopted two amendments and voted on the bill as a committee substitute. The first amendment was a substitute amendment to Amendment 5A which was traveling with the bill. It contained the language of the other traveling amendments but removed the provision of Amendment 5A which limited the application of the bill to 16 and 17 year-old offenders with a prior conviction for a forcible felony (or for whom adjudication was withheld). The second amendment required the Department of Corrections to make every reasonable effort to physically separate any 16 and 17 year-old sentenced under the bill from adult inmates.

VI. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

David M. De La Paz

David M. De La Paz

AS FURTHER REVISED BY THE COMMITTEE ON Juvenile Justice:

Prepared by:

Staff Director:

Lori Ager

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AS FURTHER REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE
APPROPRIATIONS:

Prepared by:

Staff Director:

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