

**STORAGE NAME:** h0159.cp

**DATE:** March 10, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME AND PUNISHMENT  
ANALYSIS**

**BILL #:** HB 159

**RELATING TO:** Juveniles

**SPONSOR(S):** Rep. Kyle

**TIED BILL(S):** None

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

- (1) CRIME AND PUNISHMENT
  - (2) CORRECTIONS
  - (3) JUVENILE JUSTICE
  - (4) CRIMINAL JUSTICE APPROPRIATIONS
  - (5)
- 

**I. SUMMARY:**

HB 159 lowers juvenile court jurisdiction from children under 18 years of age, to children under 16 years of age. Under the bill, the definition of "child" or "juvenile" is amended to mean "any unmarried person under the age of 16 who has not been emancipated . . ." The effect of this change is to make persons 16 years or age and older "adults" for purposes of prosecuting violations of criminal law. Under the bill, all "adults" 16 and 17 years of age would be prosecuted in adult court for all violations of criminal law. For persons 16 and 17 years of age who are to be sentenced for a crime, HB 159 authorizes the judge to impose either adult or juvenile sanctions in the same manner as currently provided under existing law.

HB 159 also removes the transfer provisions of current law regarding 16 and 17 year old offenders which would be rendered obsolete as a result of the change in juvenile court age jurisdiction.

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:

In fiscal year 1998-99, there were 101,659 youths referred to the DJJ. Of these youths 45,784 were 16 and 17 years of age at the time of referral. During this same time period, 3,535 youths were transferred to adult court for prosecution.

**Transfer Provisions** With regard to juveniles 16 and 17 years of age, current law gives State Attorneys the **discretion** to file an information in order to prosecute a juvenile as an adult for any felony offense. Also, if the juvenile has two previous adjudications or adjudications withheld for crimes ("delinquent acts"), at least one of which was a felony, the state attorney may direct file the juvenile to adult court for a misdemeanor offense. [s. 985.227(1)(b), F.S.].

In addition, State Attorneys **must** file an information if a juvenile is 16 or 17 years-of-age and the juvenile has a previous adjudication for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery, or aggravated assault, and is charged with a second or subsequent violent crime against a person. [s. 985.227(2)(a), F.S.].

**Effect of Direct File or Waiver** When a juvenile is transferred to adult court for prosecution, all other felony juvenile cases in which the issue of guilt remains pending, are transferred to the adult court for resolution. A juvenile transferred to adult court who is found guilty of the charged offense, or lesser included offense, must be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the adult court judge imposes juvenile sanctions pursuant to s. 985.233(4)(b), F.S.

**Adult Sentences For Juvenile Offenders Prosecuted as Adults** Currently under Florida law, the only instance which requires the imposition of adult sanctions for juvenile offenders prosecuted as adult, are those cases in which the offender is indicted for a capital offense or offense punishable by life, and the offender is found to have committed the offense for which he or she was indicted. [s. 985.225(3), F.S.; s. 985.233(4), F.S.].

In all other instances, juveniles prosecuted as adults can receive **either** an adult sentence or a juvenile sentence. [s. 985.233, F.S.]. Adult court judges are prohibited from sentencing a juvenile offender charged as an adult to a combination of juvenile sanctions and adult sanctions. [s. 985.233(4)(b), F.S.]. As a result, the judge must decide whether to impose

exclusively adult court sanctions (which includes a youthful offender option discussed later), or juvenile sanctions.

#### A. The Criminal Punishment Code

All non-capital felony offenders in adult court are subject to the Florida Criminal Punishment Code (hereinafter "The Code") for offenses committed on or after October 1, 1998. [s. 921.002 - 921.0026, F.S.]. The Code establishes a "floor" or minimum sentence that a court may impose for the offenses before it, unless a reason for a more lenient sentence (a "downward departure sentence") is authorized by statute. This 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 allowed by statute for each offense.

Despite the "lowest permissible sentence" prescribed by the Code, the court may still sentence an offender to less than the lowest permissible sentence provided there are certain statutory mitigating factors present which justify a more lenient "downward departure" sentence.

For those offenders who qualify for a non-state prison sanction under the Code, the sentence can include a period of incarceration of up to one year in the county jail followed by a form of community supervision for a period of years. Alternatively, a non-state prison sanction can consist entirely of community supervision.

#### B. Youthful Offenders

A large number of juveniles transferred to adult court qualify for a youthful offender sentence notwithstanding the Code. [s. 958.04(2), F.S.].

##### 1. Imposition of Youthful Offender Sanctions by the Courts -

Under s. 958.04, the court may sentence a juvenile transferred to adult court as a youthful offender if the offender 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. [s. 985.04(2)(c), F.S.].

##### 2. Designation of Youthful Offenders by the Department of Corrections -

Florida law also authorizes the Department of Corrections to designate inmates as youthful offenders if they meet the criteria set forth in s. 958.04, F.S., and if they are eligible for control release pursuant to s.947.146, F.S. [s.958.045(8), F.S.]. Consistent with this provision, the Department of Corrections may classify a qualifying inmate as a youthful offender if the inmate is either 24 years old or less and is serving a sentence of ten years or less, or 19 years old or less and safety concerns require placement in a youthful offender facility. [s. 958.11(6), F.S.].

##### 3. The Basic Training Program

Under s. 958.045, F.S., the Department of Corrections must develop and implement a basic training program for youthful offenders. The basic training program must be at least 120 days in duration. The program includes marching drills, manual labor assignments,

physical training, personal and general education development, basic education courses, and rehabilitation programs.

The Department of Corrections is required to screen all youthful offenders for suitability into the basic training program. If an offender meets the criteria, and space is available, the Department must request that the sentencing court give approval for the offender to participate in the program. If approval is granted and the offender satisfactorily completes the program, the court must modify the sentence imposed and place the offender on probation. [s. 958.045(5)(c), F.S.].

Through the basic training program a youthful offender can reduce a ten-year prison sentence (having it converted to probation) by completing the 120-day program.

### **Juvenile Sanctions For Juveniles Prosecuted as Adult**

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." Adjudication of delinquency is not a conviction. 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. If juvenile sanctions are imposed and DJJ determines that such sanctions are unsuitable, DJJ may return the child to the Court for imposition of alternative sanctions, including adult sanctions. If DJJ places the child in a juvenile community control program, the court may retain jurisdiction over the child until the child's 19th birthday. If DJJ places the child in a commitment program, the court may retain jurisdiction until the child's 21st birthday. DJJ may discharge a child from a commitment program prior to age 21 if DJJ notifies the Court and the Court does not object within 14 days.

#### **C. EFFECT OF PROPOSED CHANGES:**

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#### **D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not yet determined the fiscal impact of this bill.

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

A. 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.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

C. 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.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

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David M. De La Paz

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