

STORAGE NAME: h0159s1.cp

DATE: March 22, 2000

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

BILL #: CS/HB 159

RELATING TO: Juveniles

SPONSOR(S): Committee on Crime and Punishment and Rep. Kyle

TIED BILL(S): None

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

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

I. SUMMARY:

HB 159 requires the adult prosecution of offenders 16 or 17 years of age, at the time the crime was committed, who would qualify for a "10-20-Life" sentence. The bill also requires the imposition of the minimum mandatory prison terms of "10-20-Life" to these offenders upon conviction. Under the bill, neither juvenile sanctions nor youthful offender sentences would be authorized for offenders prosecuted under the bill's provisions.

On March 16, 2000, the Criminal Justice Impact Conference determined the fiscal impact of the identical Senate bill SB 1548 to be insignificant.

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 new law amended s. 775.087 to provide greater minimum mandatory prison terms for certain felonies committed when the offender was armed with a firearm or destructive device. Under s. 775.087(2), 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
- (l) 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) car jacking

(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, 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.

While the 10 year minimum mandatory sentence does not apply if the offense is burglary of a conveyance or aggravated assault, the 20 and 25 year minimum mandatories do apply to these offenses.

For purposes of imposing the minimum mandatory prison terms under "10-20-Life" s. 775.087(4) 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) provides that the Legislature intends for the new minimum mandatory sentences to be imposed for each qualifying count and the court is required to impose the minimum mandatory sentences consecutive to any other term of imprisonment imposed for any other felony offense.

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. 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.].

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.

With respect to juveniles prosecuted in adult court, if the judge decides to impose adult sanctions and the adult sanctions require the imposition of a minimum mandatory prison sentence, the minimum mandatory prison sentence must be included into the 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 a youthful offender sentence (if the youth qualifies).

B. Imposition of Youthful Offender Sanctions by the Court -

Pursuant to s. 985.233(4) and 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.].

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." 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:

HB 159 requires the adult prosecution of offenders 16 or 17 years of age, at the time the crime was committed, who would qualify for a "10-20-Life" sentence. The bill also requires the imposition of the minimum mandatory prison terms of "10-20-Life" to these offenders upon conviction. Under the bill, neither juvenile sanctions nor youthful offender sentences would be authorized for offenders prosecuted under the bill's provisions.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

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:

On March 16, 2000, the Criminal Justice Impact Conference determined the fiscal impact of the identical Senate bill SB 1548 to be insignificant.

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.

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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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. 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 775.087(2) ("10-20-Life") to qualifying juveniles ages 16 and 17.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

David M. De La Paz

David M. De La Paz