

STORAGE NAME: h0159s1.jj
DATE: March 31, 2000

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

BILL #: CS/HB 159
RELATING TO: Prosecution of Juveniles
SPONSOR(S): Committee on Crime and Punishment and Rep. Kyle
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
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (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

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated assault;
- g. Aggravated battery;
- h. Kidnapping;
- 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, 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.

On March 16, 2000, the Criminal Justice Impact Conference determined the fiscal impact of Senate Bill 1548 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), 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. Kidnapping;
- 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.

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), 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.

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 section (d) to s. 985.227, 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.

In fiscal year 1998 - 1999, DJJ reports that there were 2,394 16- and 17-year-old juvenile offenders who were alleged to have committed offenses that would have met the direct file criteria provided in the bill. DJJ estimates that roughly half of these juvenile offenders were direct filed under current law, due to the seriousness of the offense and the offender's criminal history. In light of the number of offenders who are direct filed at the discretion of the prosecutor under current law, DJJ expects that the bill would have a minimal effect on the agency. In fiscal year 1998 - 1999, only 676 juvenile offenders were committed to DJJ for an enumerated offense described in the bill. DJJ was unable to track whether any of these 676 offenders possessed or discharged a firearm or destructive device during the commission of the enumerated offense. However, data from the Department of Corrections indicates that roughly 33% of all offenders convicted of enumerated offenses described in s. 775.087(2)(a)1.a.-q., F.S., possessed or discharged a firearm while committing the offense. Based on Department of Corrections data, DJJ estimates that roughly 33% of the

STORAGE NAME: h0159s1.jj

DATE: March 31, 2000

PAGE 5

676 offenders committed to DJJ for an enumerated offense described in the bill would have possessed or discharged a firearm while committing the offense. However, this estimate fails to consider the likelihood that offenders who did in fact possess or discharge a firearm are probably more likely to have been direct filed, even under current law. Therefore, the impact of this bill may be even less than projected.

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:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On March 16, 2000, the Criminal Justice Impact Conference determined the fiscal impact of Senate Bill 1548 to be insignificant. The bill could result in a cost savings for DJJ and juvenile courts. However, any cost savings for DJJ will likely result in a cost shift to local jails, adult courts, and the Department of Corrections. Based on DJJ's data, the overall fiscal impact is expected to be insignificant.

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

STORAGE NAME: h0159s1.jj

DATE: March 31, 2000

PAGE 6

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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The bill may be ambiguous as to whether its provisions apply to juvenile offenders charged with attempting to commit offenses described in s. 775.087(2)(a)1.a.-q., F.S. The provisions of s. 775.087(2), F.S., clearly apply to adult offenders charged with committing or attempting to commit the enumerated offenses. It appears that the bill intended to exclude juvenile offenders charged with possession of a firearm by felon, described in s. 775.087(2)(a)1.r., F.S., from the provisions of "10-20-Life." An amendment clarifying the intent of the bill as to the issue might be appropriate.

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.

None by the Committee on Juvenile Justice to the CS/HB 159.

STORAGE NAME: h0159s1.jj

DATE: March 31, 2000

PAGE 7

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

David M. De La Paz

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AS FURTHER REVISED BY THE COMMITTEE ON Juvenile Justice:

Prepared by:

Staff Director:

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