

**STORAGE NAME:** h0547.cp

**DATE:** March 9, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
CRIME AND PUNISHMENT  
ANALYSIS**

**BILL #:** HB 547

**RELATING TO:** Sentencing Alternatives

**SPONSOR(S):** Representative Barreiro

**TIED BILL(S):** SB 898 (I)

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

- (1) JUVENILE JUSTICE YEAS 14 NAYS 0
  - (2) CRIME AND PUNISHMENT
  - (3) CRIMINAL JUSTICE APPROPRIATIONS
  - (4)
  - (5)
- 

**I. SUMMARY:**

Section 1 of the bill amends s. 985.233, F.S., which relates to the court's sentencing powers in cases involving the prosecution of juveniles as adults. Subsection (4) of s. 985.233, F.S., provides alternatives for the court when sentencing a juvenile who has been prosecuted as an adult. The bill expands the court's alternatives for sentencing such juveniles by authorizing the imposition of a combination of juvenile and adult sanctions. Under current law, such sanctions are expressly prohibited.

The bill increases the court's jurisdiction over those children who are prosecuted as adults, but ultimately receive an alternative juvenile sanction pursuant to s. 985.233(4)(b), F.S., from 19 to 21 years of age. In any case where the Department of Juvenile Justice (DJJ) determines that juvenile sanctions are inappropriate, or in any case where DJJ seeks to discharge the child from a juvenile placement ordered pursuant to s. 985.233(4)(b), F.S., prior to the child's 21st birthday, the bill requires DJJ provide written notice to the state attorney, defense counsel, and the court in order to allow a hearing on the matter prior to any action.

The bill requires the court to order juveniles to attain appropriate educational goals as a condition of any juvenile sanctions or combination of adult and juvenile sanctions imposed. The bill provides several examples of appropriate educational goals.

Section 2 of the bill provides an effective date of 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:

Presently, Florida law allows for the prosecution of children as adults in certain circumstances. Section 985.233 F.S., specifies the court's powers for sentencing juveniles prosecuted as adults. Subsection (4) of s. 985.233 F.S., provides sentencing alternatives, giving the courts disposition options. Under current law, the court may impose an adult sanction or a juvenile sanction. However, the court may not impose a combination of adult and juvenile sanctions.

If the court opts to impose juvenile sanctions, 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 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.

If the court opts to impose adult sanctions, the court may impose any sanction on the juvenile that would be legally permissible on an adult offender. Alternatively, the court may impose adult sanctions and dispose of the case under ch. 958, F.S., which relates to youthful offenders.

Under current law, no provision of s. 985.233, F.S., requires the court to enter an order requiring the child to attain any educational goals.

C. EFFECT OF PROPOSED CHANGES:

The bill expands the court's options in sentencing juveniles who have been prosecuted as adults. Under the bill, the court may impose adult or juvenile sanctions. Where the court opts to impose juvenile sanctions, the bill provides three alternatives: juvenile community control, juvenile commitment, or a combination of juvenile and adult sanctions. The bill also

allows the court to enter an order, as a condition of any juvenile sanction imposed, requiring the child to attain specified educational goals.

Where the court opts to impose juvenile sanctions, the bill is similar to current law in requiring the court to stay adjudication of guilt and instead adjudge the child to have committed a delinquent act. Current law provides procedures for those circumstances where DJJ determines that juvenile sanctions are "unsuitable." The bill provides procedures for those circumstances where DJJ determines that juvenile sanctions are "inappropriate." The significance of this change in verbiage is not readily apparent.

If DJJ determines that juvenile sanctions are "inappropriate", the bill requires DJJ to provide the sentencing court, the state attorney's office, and the defense counsel with a written report outlining the basis for its objections to the imposition of juvenile sanctions. The bill requires DJJ to return the child to the court for further proceedings. The effect of this change is to involve the court, the state attorney, and the defense counsel in the determination of whether the imposition of juvenile sanctions is "inappropriate." If juvenile sanctions are determined to be "inappropriate", the court may impose alternative juvenile sanctions, a combination of adult and juvenile sanctions, or adult sanctions.

When juvenile sanctions are opted by the court for a juvenile offender who has been prosecuted an adult, the bill provides three alternative juvenile sentencing options. The first option is to commit the child for placement in a community control program. The court has this option under current law, however the court's jurisdiction is limited to the child's 19th birthday. Under the bill, the jurisdiction of the court over a child committed for placement in a community control program is extended from the age of 19 to the age of 21. If at any time prior to the child's 21st birthday DJJ seeks to discharge the child from a community control program, DJJ shall provide written notice to the clerk, the presiding judge, the state attorney's office, and the defense counsel and schedule a hearing within 30 days.

The bill provides a second juvenile sanction option, allowing the court to commit the child to DJJ for treatment in an appropriate juvenile commitment program until the age of 21. If at any time prior to the child's 21st birthday DJJ may seek to discharge the child from a commitment program or aftercare, DJJ shall provide written notice to the clerk, the presiding judge, the state attorney's office, and the defense counsel and schedule a hearing within 30 days.

With regard to both juvenile community control and juvenile commitment discharge decisions by DJJ, the bill deletes provisions that allow DJJ to discharge the child on its own authority if the court does not object within 14 days.

The bill provides the court a third sentencing alternative when imposing juvenile sanctions. The bill allows the court to sentence the child to a combination of adult and juvenile sanctions. If the court opts to impose a combination sentence, a child may be committed to an appropriate treatment program for an indeterminate period of time until the child reaches the age of 21, or sooner if discharged by the court. Pursuant to a combination sentence, the bill provides that once the child is discharged from the commitment program, the child may be placed on probation under the supervision of the Department of Corrections (DC).

If the child is placed in a juvenile commitment program pursuant to a combination sentence, DJJ may not discharge the child at any time prior to the child's 21st birthday unless certain requirements are met. DJJ must provide written notice to the clerk, the presiding judge, the state attorney's office, the defense counsel, and DC. The matter must be set for hearing

within 30 days of filing the notice with the clerk. The court may not enter an order to discharge until DC has met with the child and explained the terms of probation.

The bill allows the court to enter an order, as a condition of any juvenile sanction or combination sanction imposed, directing the child to obtain an appropriate educational goal. The bill specifies that the court shall consider the educational needs assessment conducted pursuant to s. 985.224, F.S., and make a finding as to the child's educational status when imposing sentence. The court may enter an order that the child attain a specified educational goal. The bill provides examples of educational goals, which include attaining a high school diploma, completing of a literacy course, completing a vocational course, attending and completing of the child's current grade if enrolled in school, or enrolling in an apprenticeship or similar program.

The bill deletes from the juvenile sentencing options outlined in s. 985.233(4)(b)3, F.S., the provision which allows that the court to order disposition pursuant to s. 985.231, F.S., as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions pursuant to s. 985.233(4)(a), F.S.

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

Please refer to the "Present Situation" and "Effect of Proposed Changes" at Paragraphs II-B and II-C, above.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Please refer to the "Fiscal Comments," at Paragraph III-D, below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

This bill affects juveniles who are prosecuted as adults. Under current law, such juveniles may ultimately receive an adult sanction or a juvenile sanction, but not both. The bill provides authorization for the court to impose a combination of adult and juvenile sanctions.

The Criminal Justice Impact Conference has reviewed the bill and determined that its effect on DC will be minimal, but indeterminate. Any impact on DC is probably attributable to the number of youth who receive straight juvenile sanctions under current law, but who may receive a combination sentence pursuant to the bill. The Impact Conference projected that cost of supervision associated with probation would account for the majority of any fiscal consequence.

The Impact Conference did not address the fiscal impact of the bill on other parties likely to be affected by the bill including DJJ, state attorneys, defense attorneys, and the court system. The bill's fiscal consequences for state attorneys, defense attorneys, and the court system primarily relate to notification and hearing provisions in the bill. No historical data was provided concerning the number of cases deemed inappropriate or unsuitable for juvenile sanction. No historical data exists relative to early discharge determinations prior to the child's 21st birthday. Therefore, it is difficult to predict how many hearings addressing such issues will be required by the bill. However, there will be costs associated with the bill to the extent that any such hearings occur.

DJJ will likely bear the majority of fiscal consequences associated with the bill. DJJ used data from fiscal year 1997-1998 to project the additional anticipated costs. In that year, 568 (12%) of the 4,660 youth transferred to the adult system for prosecution were sentenced back to the juvenile system. If any of the youth in this cohort received a combination sentence pursuant to the bill, it would not be expected to result in any additional fiscal consequence for DJJ. The remaining 4,092 youth represent the cohort that might receive a combination sentence under the bill which would be expected to result in a fiscal impact on DJJ.

Of the remaining 4,092 youth, 966 were incarcerated in the adult prison system. DJJ does not anticipate any youth in the cohort represented by these 966 offenders to be likely candidates for a combination sentence pursuant to the bill. Of the 3,126 remaining offenders, 1,296 were sentenced for either non-violent offenses or to a period of adult supervision for less than three years. DJJ anticipates that these 1,296 offenders represent the cohort of offenders who are likely to be candidates for combination sentencing under the bill.

Relying on the fact that 12% of eligible offenders ultimately received juvenile sanctions in 1997-1998, DJJ projected that 156 additional juveniles (12% of the cohort represented by the 1,296 offenders) would ultimately receive a combination sentence under the bill. To the extent that the bill results in an increase in the number of juveniles supervised by DJJ, additional fiscal consequences are anticipated.

DJJ anticipated costs associated with the bill using the projected figure of 156 additional offenders subject to the supervision of DJJ. DJJ anticipates non-recurring expenditures in the amount of \$12,324,000.00 associated with building beds in which to place the additional 156 offenders, at a cost of \$79,000 per bed. DJJ anticipates recurring expenditures in the amount of \$5,409,300.00 based on operational costs of placing 156

offenders in high-risk commitment for one year, at an average daily cost of \$95.00 per offender.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of municipalities or counties to raise revenues in the aggregate.

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

The bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Crime and Punishment Comments: The "combination sentence" available under the bill provides that once the child is discharged from the DJJ commitment program, the child may be placed on probation under the supervision of the DC. Although the bill refers to this sentencing option as a "combination of adult and juvenile sanctions" this section is created under s. 985.233(4)(b) which is the portion of sentencing options pertaining to juvenile sanctions. Therefore, it is not clear whether a violation occurring while a juvenile is under DC supervision will result in adult or juvenile sanctions. If a violation of the DC supervision is interpreted to require only juvenile sanctions, there would be no adult consequence attaching to the DC component of the bill's combination sentence.

**STORAGE NAME:** h0547.cp

**DATE:** March 9, 2000

**PAGE 7**

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House Committee on Juvenile Justice considered the bill on March 8, 2000. Representative Ryan offered an amendment which allows the court to order a juvenile sentenced pursuant to the bill to attain appropriate educational goals rather than simply an appropriate educational goal. The amendment passed without objection and the Committee reported the bill and the amendment favorably.

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Staff Director:

J. Travis Coker

Lori Ager

AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

David M. De La Paz

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