

By Senator Smith

14-253-03

1 A bill to be entitled
2 An act relating to youthful offenders; amending
3 s. 958.04, F.S., relating to judicial
4 disposition of youthful offenders; providing
5 that the court may not sentence as youthful
6 offenders certain offenders who have pled nolo
7 contendere or guilty to, or been found guilty
8 of, capital felonies, life felonies,
9 first-degree felonies, or second-degree
10 felonies involving the use or threatened use of
11 force or violence; increasing the maximum
12 period of commitment of a youthful offender to
13 the custody of the Department of Corrections or
14 maximum period of incarceration or placement
15 under supervision on probation or community
16 control; removing legislative declaration with
17 respect to construction of a basic training
18 program facility; reenacting s. 958.03(5),
19 F.S., relating to the definition of the term
20 "youthful offender," s. 958.046, F.S., relating
21 to placement in county-operated boot camp
22 programs for youthful offenders, s. 958.11(4),
23 F.S., relating to designation of institutions
24 and programs for youthful offenders and
25 assignment from youthful offender institutions
26 and programs, and s. 985.233(4)(c), F.S.,
27 relating to the imposition of adult sanctions,
28 to incorporate the amendment to s. 958.04,
29 F.S., in references thereto; amending s.
30 951.231, F.S.; conforming an obsolete reference
31 to provisions relating to mandatory

1 participation in the youthful offender basic
2 training program under certain circumstances;
3 amending s. 958.045, F.S., relating to youthful
4 offender basic training program; revising
5 notice requirements; revising the sanctions for
6 a youthful offender in the basic training
7 program who becomes unmanageable; allowing the
8 department to revoke the offender's gain-time,
9 to terminate the offender's participation in
10 the program, and to return the offender to the
11 general population of inmates in the
12 correctional system; providing for alternative
13 placement on probation or community control of
14 an offender who has completed the basic
15 training program; providing for the offender to
16 remain on community control upon release from a
17 community residential program; providing for
18 revocation of community control and sentencing
19 of the offender if the offender violates the
20 conditions of community control; conforming
21 terminology; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 958.04, Florida Statutes, is
26 amended to read:

27 958.04 Judicial disposition of youthful offenders.--

28 (1) The court may sentence as a youthful offender any
29 person:

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1 (a) Who is at least 18 years of age or who has been
2 transferred for prosecution to the criminal division of the
3 circuit court pursuant to chapter 985;

4 (b) Who is found guilty of or who has tendered, and
5 the court has accepted, a plea of nolo contendere or guilty to
6 a crime which is, under the laws of this state, a felony if
7 such crime was committed before the defendant's 21st birthday;
8 and

9 (c) Who has not previously been classified as a
10 youthful offender under the provisions of this act; however, a
11 ~~no~~ person who has pled nolo contendere or guilty to, or been
12 found guilty of, a capital felony, or life felony,
13 first-degree felony, or second-degree felony involving the use
14 or attempted use of force or violence may not be sentenced as
15 a youthful offender under this act. In addition, a person who
16 is subject to s. 775.087(2) and (3) may not be sentenced as a
17 youthful offender.

18 (2) In lieu of other criminal penalties authorized by
19 law and notwithstanding any imposition of consecutive
20 sentences, the court shall dispose of the criminal case as
21 follows:

22 (a) The court may place a youthful offender under
23 supervision on probation or in a community control program,
24 with or without an adjudication of guilt, under such
25 conditions as the court may lawfully impose for a period of
26 not more than 8 ~~6~~ years. Such a period of supervision shall
27 not exceed the maximum sentence for the offense for which the
28 youthful offender was found guilty.

29 (b) The court may impose a period of incarceration as
30 a condition of probation or community control, which period of
31 incarceration shall be served in either a county facility, a

1 department probation and restitution center, or a community
2 residential facility which is owned and operated by any public
3 or private entity providing such services. No youthful
4 offender may be required to serve a period of incarceration in
5 a community correctional center as defined in s. 944.026.
6 Admission to a department facility or center shall be
7 contingent upon the availability of bed space and shall take
8 into account the purpose and function of such facility or
9 center. Placement in such a facility or center shall not
10 exceed 364 days.

11 (c) The court may impose a split sentence whereby the
12 youthful offender is to be placed on probation or community
13 control upon completion of any specified period of
14 incarceration; however, if the incarceration period is to be
15 served in a department facility other than a probation and
16 restitution center or community residential facility, such
17 period shall be for not less than 1 year or more than 4 years.
18 The period of probation or community control shall commence
19 immediately upon the release of the youthful offender from
20 incarceration. The period of incarceration imposed or served
21 and the period of probation or community control, when added
22 together, shall not exceed 8 6 years.

23 (d) The court may commit the youthful offender to the
24 custody of the department for a period of not more than 8 6
25 years, provided that any such commitment shall not exceed the
26 maximum sentence for the offense for which the youthful
27 offender has been convicted. Successful participation in the
28 youthful offender program by an offender who is sentenced as a
29 youthful offender by the court pursuant to this section, or is
30 classified as such by the department, may result in a
31 recommendation to the court, by the department, for a

1 modification or early termination of probation, community
2 control, or the sentence at any time prior to the scheduled
3 expiration of such term. When a modification of the sentence
4 results in the reduction of a term of incarceration, the court
5 may impose a term of probation or community control which,
6 when added to the term of incarceration, shall not exceed the
7 original sentence imposed.

8 (3) The provisions of this section shall not be used
9 to impose a greater sentence than the permissible sentence
10 range as established by the Criminal Punishment Code pursuant
11 to chapter 921 unless reasons are explained in writing by the
12 trial court judge which reasonably justify departure. A
13 sentence imposed outside of the code is subject to appeal
14 pursuant to s. 924.06 or s. 924.07.

15 ~~(4) Due to severe prison overcrowding, the Legislature~~
16 ~~declares the construction of a basic training program facility~~
17 ~~is necessary to aid in alleviating an emergency situation.~~

18 (4)~~(5)~~ The department shall provide a special training
19 program for staff selected for the basic training program.

20 Section 2. For the purpose of incorporating the
21 amendment to section 958.04, Florida Statutes, in references
22 thereto, subsection (5) of section 958.03, Florida Statutes,
23 is reenacted to read:

24 958.03 Definitions.--As used in this act:

25 (5) "Youthful offender" means any person who is
26 sentenced as such by the court or is classified as such by the
27 department pursuant to s. 958.04.

28 Section 3. For the purpose of incorporating the
29 amendment to section 958.04, Florida Statutes, in references
30 thereto, section 958.046, Florida Statutes, is reenacted to
31 read:

1 958.046 Placement in county-operated boot camp
2 programs for youthful offenders.--In counties where there are
3 county-operated youthful offender boot camp programs, other
4 than boot camps described in s. 958.04 or s. 985.309, the
5 court may sentence a youthful offender to such a boot camp.
6 In county-operated youthful offender boot camp programs,
7 juvenile offenders shall not be commingled with youthful
8 offenders.

9 Section 4. For the purpose of incorporating the
10 amendment to section 958.04, Florida Statutes, in references
11 thereto, subsection (4) of section 958.11, Florida Statutes,
12 is reenacted to read:

13 958.11 Designation of institutions and programs for
14 youthful offenders; assignment from youthful offender
15 institutions and programs.--

16 (4) The Office of the Assistant Secretary for Youthful
17 Offenders shall continuously screen all institutions,
18 facilities, and programs for any inmate who meets the
19 eligibility requirements for youthful offender designation
20 specified in s. 958.04(1)(a) and (c) whose age does not exceed
21 24 years and whose total length of sentence does not exceed 10
22 years, and the department may classify and assign as a
23 youthful offender any inmate who meets the criteria of this
24 subsection.

25 Section 5. For the purpose of incorporating the
26 amendment to section 958.04, Florida Statutes, in references
27 thereto, paragraph (c) of subsection (4) of section 985.233,
28 Florida Statutes, is reenacted to read:

29 985.233 Sentencing powers; procedures; alternatives
30 for juveniles prosecuted as adults.--

31 (4) SENTENCING ALTERNATIVES.--

1 (c) Imposition of adult sanctions upon failure of
2 juvenile sanctions.--If a child proves not to be suitable to a
3 commitment program, in a juvenile probation program, or
4 treatment program under the provisions of paragraph (b), the
5 department shall provide the sentencing court with a written
6 report outlining the basis for its objections to the juvenile
7 sanction and shall simultaneously provide a copy of the report
8 to the state attorney and the defense counsel. The department
9 shall schedule a hearing within 30 days. Upon hearing, the
10 court may revoke the previous adjudication, impose an
11 adjudication of guilt, and impose any sentence which it may
12 lawfully impose, giving credit for all time spent by the child
13 in the department. The court may also classify the child as a
14 youthful offender pursuant to s. 958.04, if appropriate. For
15 purposes of this paragraph, a child may be found not suitable
16 to a commitment program, community control program, or
17 treatment program under the provisions of paragraph (b) if the
18 child commits a new violation of law while under juvenile
19 sanctions, if the child commits any other violation of the
20 conditions of juvenile sanctions, or if the child's actions
21 are otherwise determined by the court to demonstrate a failure
22 of juvenile sanctions.

23 Section 6. Paragraph (c) of subsection (1) of section
24 951.231, Florida Statutes, is amended to read:

25 951.231 County residential probation program.--

26 (1) Any prisoner who has been sentenced under s.
27 921.18 to serve a sentence in a county residential probation
28 center as described in s. 951.23 shall:

29 (c) Participate in and complete the program required
30 by s. 958.045(1)~~s. 958.04(4)~~, if required by the supervisor
31 of the center.

1 Section 7. Section 958.045, Florida Statutes, is
2 amended to read:

3 958.045 Youthful offender basic training program.--

4 (1) The department shall develop and implement a basic
5 training program for youthful offenders sentenced or
6 classified by the department as youthful offenders pursuant to
7 this chapter. The period of time to be served at the basic
8 training program shall be no less than 120 days.

9 (a) The program shall include marching drills,
10 calisthenics, a rigid dress code, manual labor assignments,
11 physical training with obstacle courses, training in
12 decisionmaking and personal development, general education
13 development and adult basic education courses, and drug
14 counseling and other rehabilitation programs.

15 (b) The department shall adopt rules governing the
16 administration of the youthful offender basic training
17 program, requiring that basic training participants complete a
18 structured disciplinary program, and allowing for a
19 restriction on general inmate population privileges.

20 (2) Upon receipt of youthful offenders, the department
21 shall screen offenders for the basic training program. To
22 participate, an offender must have no physical limitations
23 that preclude participation in strenuous activity, must not be
24 impaired, and must not have been previously incarcerated in a
25 state or federal correctional facility. In screening offenders
26 for the basic training program, the department shall consider
27 the offender's criminal history and the possible
28 rehabilitative benefits of "shock" incarceration. If an
29 offender meets the specified criteria and space is available,
30 the department shall request, in writing from the sentencing
31 court, approval for the offender to participate in the basic

1 training program. If the person is classified by the
2 department as a youthful offender and the department is
3 requesting approval from the sentencing court for placement in
4 the program, the department shall, at the same time, notify
5 the state attorney and the victim that the offender is being
6 considered for placement in the basic training program. The
7 notice must explain that the purpose of such placement is
8 diversion from lengthy incarceration when a short "shock"
9 incarceration could produce the same deterrent effect, and
10 that the state attorney and the victim may, within 21 ~~14~~ days
11 after the mailing of the notice, notify the sentencing court
12 in writing of objections, if any, to the placement of the
13 offender in the basic training program. The sentencing court
14 shall notify the department in writing of placement approval
15 no later than 30 ~~21~~ days after receipt of the department's
16 request for placement of the youthful offender in the basic
17 training program. Failure to notify the department within 30
18 ~~21~~ days shall be considered a denial ~~an approval~~ by the
19 sentencing court of the department's request for placing the
20 youthful offender in the basic training program. Each state
21 attorney shall ~~may~~ develop procedures for notifying the victim
22 that the offender is being considered for placement in the
23 basic training program.

24 (3) The program shall provide a short incarceration
25 period of rigorous training to offenders who require a greater
26 degree of supervision than community control or probation
27 provides. Basic training programs may be operated in secure
28 areas in or adjacent to an adult institution notwithstanding
29 s. 958.11. The program is not intended to divert offenders
30 away from probation or community control but to divert them
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1 from long periods of incarceration when a short "shock"
2 incarceration could produce the same deterrent effect.

3 (4) Upon admittance to the department, an educational
4 and substance abuse assessment shall be performed on each
5 youthful offender. Upon admittance to the basic training
6 program, each offender shall have a full substance abuse
7 assessment to determine the offender's need for substance
8 abuse treatment. The educational assessment shall be
9 accomplished through the aid of the Test of Adult Basic
10 Education or any other testing instrument approved by the
11 Department of Education, as appropriate. Each offender who has
12 not obtained a high school diploma shall be enrolled in an
13 adult education program designed to aid the offender in
14 improving his or her academic skills and earning a high school
15 diploma. Further assessments of the prior vocational skills
16 and future career education shall be provided to the offender.
17 A periodic evaluation shall be made to assess the progress of
18 each offender, and upon completion of the basic training
19 program the assessment and information from the department's
20 record of each offender shall be transferred to the
21 appropriate community residential program.

22 (5)(a) If an offender in the basic training program
23 becomes unmanageable, the department may revoke the offender's
24 gain-time, terminate the offender from the program, and return
25 the offender to and place the offender in disciplinary
26 confinement for up to 30 days. Upon completion of the
27 disciplinary process, the offender shall be readmitted to the
28 basic training program, except for an offender who has
29 committed or threatened to commit a violent act. If the
30 offender is terminated from the program, the department may
31 place the offender in the general population of inmates in the

1 correctional system to complete the remainder of the
2 offender's sentence. Any period of time in which the offender
3 is unable to participate in the basic training activities may
4 be excluded from the specified time requirements in the
5 program.

6 (b) If the offender is unable to participate in the
7 basic training activities due to medical reasons, certified
8 medical personnel shall examine the offender and shall consult
9 with the basic training program director concerning the
10 offender's termination from the program.

11 (c) The portion of the sentence served prior to
12 placement in the basic training program may not be counted
13 toward program completion. Upon the offender's completion of
14 the basic training program, the department shall submit a
15 report to the court that describes the offender's performance.
16 If the offender's performance has been satisfactory, the court
17 shall issue an order modifying the sentence imposed and
18 placing the offender on probation or community control or a
19 combination thereof. The term of probation or community
20 control may include placement in a community residential
21 program. If the offender violates the conditions of probation
22 or community control, the court may revoke probation or
23 community control and impose any sentence that it might have
24 originally imposed as a condition of probation or community
25 control.

26 (6)(a) Upon completing the basic training program, an
27 offender shall be transferred to a community residential
28 program and reside there for a term designated by department
29 rule. If the basic training program director determines that
30 the offender is not suitable for the community residential
31 program but is suitable for an alternative postrelease program

1 or release plan, within 30 days prior to program completion
2 the department shall evaluate the offender's needs and
3 determine an alternative postrelease program or plan. The
4 department's consideration shall include, but not be limited
5 to, the offender's employment, residence, family situation,
6 and probation or postrelease supervision obligations. Upon the
7 approval of the department, the offender shall be released to
8 an alternative postrelease program or plan.

9 (b) While in the community residential program, as
10 appropriate, the offender shall engage in gainful employment,
11 and if any, shall pay restitution to the victim. If
12 appropriate, the offender may enroll in substance abuse
13 counseling, and if suitable, shall enroll in a general
14 education development or adult basic education class for the
15 purpose of attaining a high school diploma. Upon release from
16 the community residential program, the offender shall remain
17 on probation, community control, or other postrelease
18 supervision, and abide by the conditions of the offender's
19 probation, community control, or postrelease supervision. If,
20 upon transfer from the community residential program, the
21 offender has not completed the enrolled educational program,
22 the offender shall continue the educational program until
23 completed. If the offender fails to complete the program, the
24 department may request the court or the control release
25 authority to execute an order returning the offender back to
26 the community residential program until completion of the
27 program.

28 (7) The department shall implement the basic training
29 program to the fullest extent feasible within the provisions
30 of this section.

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1 (8)(a) The Assistant Secretary for Youthful Offenders
2 shall continuously screen all institutions, facilities, and
3 programs for any inmate who meets the eligibility requirements
4 for youthful offender designation specified in s. 958.04,
5 whose age does not exceed 24 years.

6 **(b)** The department may classify and assign as a
7 youthful offender any inmate who meets the criteria of s.
8 958.04.

9 ~~(b)~~ A youthful offender who is designated as such by
10 the department and assigned to the basic training program must
11 be eligible for control release pursuant to s. 947.146.

12 (c) The department shall work cooperatively with the
13 Control Release Authority or the Parole Commission to effect
14 the release of an offender who has successfully completed the
15 requirements of the basic training program.

16 (d) Upon an offender's completion of the basic
17 training program, the department shall submit a report to the
18 releasing authority that describes the offender's performance.
19 If the performance has been satisfactory, the release
20 authority shall, upon receipt of a court order modifying the
21 offender's sentence, establish a release date that is within
22 20 ~~30~~ days following receipt of the court order ~~program~~
23 ~~completion~~. As a condition of release, the offender shall be
24 placed in a community residential program as provided in this
25 section or on community supervision as provided in chapter
26 947, and shall be subject to the conditions established
27 therefor.

28 (9) Upon commencement of the community residential
29 program, the department shall submit annual reports to the
30 Governor, the President of the Senate, and the Speaker of the
31 House of Representatives detailing the extent of

1 implementation of the basic training program and the community
2 residential program, and outlining future goals and any
3 recommendation the department has for future legislative
4 action.

5 ~~(10) Due to serious and violent crime, the Legislature~~
6 ~~declares the construction of a basic training facility is~~
7 ~~necessary to aid in alleviating an emergency situation.~~

8 (10)~~(11)~~ The department shall provide a special
9 training program for staff selected for the basic training
10 program.

11 (11)~~(12)~~ The department may develop performance-based
12 contracts with qualified individuals, agencies, or
13 corporations for the provision of any or all of the youthful
14 offender programs.

15 (12)~~(13)~~ An offender in the basic training program is
16 subject to rules of conduct established by the department and
17 may have sanctions imposed, including loss of privileges,
18 restrictions, disciplinary confinement, alteration of release
19 plans, or other program modifications in keeping with the
20 nature and gravity of the program violation. Administrative or
21 protective confinement, as necessary, may be imposed.

22 (13)~~(14)~~ The department may establish a system of
23 incentives within the basic training program which the
24 department may use to promote participation in rehabilitative
25 programs and the orderly operation of institutions and
26 facilities.

27 (14)~~(15)~~ The department shall develop a system for
28 tracking recidivism, including, but not limited to, rearrests
29 and recommitment of youthful offenders, and shall report on
30 that system in its annual reports of the programs.

31 Section 8. This act shall take effect October 1, 2003.

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SENATE SUMMARY

Provides that a court may not sentence as youthful offenders certain offenders who have pled nolo contendere or guilty to, or have been found guilty of, capital felonies, life felonies, first-degree felonies, or second-degree felonies involving the use or threatened use of force or violence. Increases the maximum period of commitment of a youthful offender to the custody of the Department of Corrections or maximum period of incarceration or placement under supervision on probation or community control. Deletes a legislative declaration concerning construction of a basic training program facility. Revises requirements for notice that the department must give before it seeks to place a youthful offender in the basic training program. Revises the sanctions for a youthful offender in the basic training program who becomes unmanageable. Allows the department to revoke the offender's gain-time, to terminate the offender's participation in the program, and to return the offender to the general population of inmates in the correctional system. Provides for alternative placement on probation or community control of an offender who has completed the basic training program. Provides for the offender to remain on community control upon release from a community residential program. Provides for the revocation of community control and sentencing of the offender if the offender violates the conditions of community control. Conforms cross-references and terminology.