

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1771 Relating to Youthful Offender
SPONSOR(S): Committee for Public Safety & Crime Prevention
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Crime Prevention</u>	<u>16 Y, 1 N</u>	<u>Maynard</u>	<u>De La Paz</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The youthful offender program is designed to divert qualifying young adult offenders away from lengthy periods of incarceration when a short "shock" incarceration period will suffice. Those admitted to the program are assessed by the Department of Corrections for educational deficiencies and substance abuse problems. A basic training program is included which must be at least 120 days in duration. The basic training program consists of marching drills, physical training, personal and educational development. Offenders who satisfactorily complete the program have any existing prison term converted into a probationary sentence. The probationary sentence may include placement into a community residential program. The maximum period of incarceration which may be imposed under a youthful offender sentence is four years. The total maximum length of a youthful offender sentence, including the period of probation or community control, is six years.

Currently, only capital felons and life felons are disqualified from youthful offender sentences. As a result, someone could commit an armed home invasion robbery, a first degree felony punishable by up to 30 years in prison and, if sentenced as a youthful offender, that person could be released on probation after completing a basic training program lasting 120 days. In addition, even if an offender in the basic training program becomes unmanageable, the Department of Corrections may not terminate the offender from the program unless the offender becomes violent or threatens violence. Recently, there have been instances where the youthful offender provisions have been used to circumvent the mandatory sentencing requirements of 10-20-Life under s. 775.087(2) and (3), F.S..

This bill restricts the youthful offender program to only those offenders who have committed third degree felonies, or nonviolent second degree felonies. The bill extends the maximum length of a youthful offender's total sentence from six to eight years. In addition, the bill provides that offenders who become unmanageable during the basic training program, must be terminated from the program and returned to the general prison population. The Department of Corrections then must report to the judge the reasons for the termination and the judge under the bill may order the youth to either have the offender complete the remaining portion of the initial sentence, or resentence the offender to any punishment it could have imposed under the Criminal Punishment Code. The bill also allows the court to order an offender who successfully completes basic training to a stricter form of community supervision called "community control" rather than probation. In addition, the bill clarifies that youthful offender sentences may not be imposed on offenders who have been convicted or plead to offenses which qualify for mandatory sentences under 10-20-Life.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb04a.ps.doc
DATE: March 20, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

The youthful offender program is designed to divert qualifying young adult offenders away from lengthy periods of incarceration when a short "shock" incarceration period will suffice. Those admitted to the program are assessed by the Department of Corrections for educational deficiencies and substance abuse problems. A basic training program is included which must be at least 120 days in duration. The basic training program consists of marching drills, physical training, personal and educational development. Offenders who satisfactorily complete the program have any existing prison term converted into a probationary sentence. The probationary sentence may include placement into a community residential program. The maximum period of incarceration which may be imposed under a youthful offender sentence is four years. The total maximum length of a youthful offender sentence, including the period of probation or community control, is six years.

Currently, only capital felons and life felons are disqualified from youthful offender sentences.¹ As a result, someone could commit an armed home invasion robbery, a first degree felony punishable by up to 30 years in prison and, if sentenced as a youthful offender, that person could be released on probation after completing a basic training program lasting 120 days. In addition, even if an offender in the basic training program becomes unmanageable, the Department of Corrections may not terminate the offender from the program unless the offender becomes violent or threatens violence.

Recently, there have been instances where the youthful offender provisions have been used to circumvent the mandatory minimum sentencing requirements of 10-20-Life under s. 775.087(2) and (3), F.S. Notwithstanding the mandatory language of the 10-20-Life statute, district courts have interpreted the statute as granting judges the discretion to order youthful offender sentences. For example, in State v. Drury, 829 So.2d 287 (Fla 1st DCA 2002), Circuit Court Judge Janet Ferris sentenced the defendant, a 16 year old direct-filed juvenile, as a youthful offender, despite the fact he met the heightened criteria for 16 to 17-year olds to be subject to 10-20-Life penalties. Drury, working with a codefendant, approached the victim on the front porch of his home, pulled out a gun, and aimed it at the victim while

¹s. 958.04(1) provides that "The court may sentence as a youthful offender any person:

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

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

(c) Who has not previously been classified as a youthful offender under the provisions of this act; however, no person who has been found guilty of a capital or life felony may be sentenced as a youthful offender under this act. "

verbally threatening him. The victim managed to wrestle the gun away from Drury while fighting off the codefendant, though Drury fired several times. The First District Court of Appeals agreed with the lower court's decision finding that "the mandatory language 'shall be subject to sentencing under s. 775.087(2)(a)' in section 985.227(2)(d) would not preclude the imposition of a youthful offender sentence in lieu of a 10/20/Life sentence." Drury at 288. See also State v. Wooten 782 So.2d 408 (Fla 2nd DCA 2001), (Minimum mandatory sentences do not supercede youthful offender sentence.); and Darrow v. State 789 So.2d 552 (Fla 5th DCA 2001) Most recently, in Beatrice v. State, 832 So.2d 972 (Fla 4th DCA 2003) the Fourth District Court of Appeals held that a youthful offender sentence was not available to a defendant because he had been convicted of a life felony. The court referenced the criteria under s. 958.04(1)(c), F.S. of youthful offenders and noted that life felons were not permitted to receive youthful offender sentences. The bill would amend the criteria in s. 958.04(1)(c), F.S., to clarify that those convicted under the mandatory sentencing requirements of 10-20-Life would also be ineligible for youthful offender sentences.

The bill also narrows the youthful offender program to only those offenders who have committed third degree felonies, or nonviolent second degree felonies. Thus a youth would no longer be eligible for a youthful offender sentence, if he or she has been found guilty of or plead guilty or no lo contendere to a capital felony, a life felony, a first degree felony, or a second degree felony involving the use or attempted use of force or violence. In addition, a person convicted of one of the enumerated violent felonies in s. 775.087(2) and (3), F.S. which provide minimum mandatory sentences for felonies committed while in possession of a firearm would also be ineligible. Thus, the bill clarifies that youthful offender sentences may not be imposed on offenders who have been convicted or plead to offenses which qualify for mandatory sentences under 10-20-Life.

Florida Statute also authorizes the Department of Corrections to classify certain inmates as youthful offenders. This bill amends the criteria in s. 958.045, F.S. which the Department of Corrections uses to screen inmates for eligibility into the youthful offender program. The Department of Corrections under 958.045(8)(a), F.S. shall screen all institutions, facilities, and programs for inmates whose age does not exceed 24 years and also who meet the eligibility requirements of 958.04, F.S. However, 958.11(4), F.S. states that the screening criteria is for offenders who are 24 years of age whose sentences do not exceed 10 years, subject to the requirements of 958.04(1)(a) and (c), F.S. The bill makes the two provisions regarding DOC screening consistent.

In addition, the bill provides a different means of dealing with offenders who become unmanageable during the basic training program. Under the current statutory scheme, the Department of Corrections may only discipline a youth who has become unmanageable in the program by placing the offender in disciplinary confinement for up to 30 days. Upon completion of this period, the offender must be readmitted into the basic training program unless the offender has committed or threatened to commit a violent act. A youthful offender who has been terminated from a program may be placed in the general population for the completion of his sentence. Under the proposed legislation, unmanageable youths would not be placed in 30 day confinement and then returned to the program. Instead, unmanageable youths must be terminated from the program and returned to the general prison population. The Department would then prepare a report to the court regarding the facts and circumstances surrounding the youth's termination from the program and the court would then be able to either sentence the youth to any sentence the court might have originally imposed under the Punishment Code pursuant to ch. 921, F.S., or have the offender returned to complete the remainder of his original sentence.

The bill also allows the court to order an offender who successfully completes basic training to a stricter form of community supervision called "community control" rather than probation, and requires the Department to set a release date for an offender within 20 days of **receipt of the court's modified order** instead of 30 days **after the completion of the program** which is the current deadline. The bill extends the maximum length of a youthful offender's total sentence to from six to eight years. It is important to note that this will not increase the 4 year limit on the incarceration component of the

sentence, but rather would extend the community supervision part of the sentence from 2 years to 4 years.

C. SECTION DIRECTORY:

Section 1. Amends s. 958.04, F.S. to change youthful offender criteria and extends the custodial jurisdiction of the Department of Corrections from 6 to 8 years.

Section 2. Reenacts s. 958.03, F.S. for purposes of incorporation.

Section 3. Reenacts s. 958.046, F.S. for purposes of incorporation.

Section 4. Reenacts s. 958.11, F.S. for purposes of incorporation.

Section 5. Amends s. 958.045, F.S. to change procedures relating to youthful offenders.

Section 6. Provides an effective date.

II. 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:

See Fiscal Comments

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not yet reviewed this bill for a fiscal impact..

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES