

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1061 Parole for Juveniles
SPONSOR(S): Rep. Holloway
TIED BILLS: **IDEN./SIM. BILLS:** SB 530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)		Maynard	De La Paz
2) Public Safety & Crime Prevention			
3) Public Safety Appropriations			
4) Appropriations			
5)			

SUMMARY ANALYSIS

Under s. 985.225(3), F.S., a child of any age indicted by a grand jury for an offense punishable by death or by life in prison must be “tried and handled in every respect as an adult.” The child must also be sentenced as an adult. This transfer to the adult system is different from the discretionary transfers for other offenses which allow a prosecutor a certain amount of leeway to direct file juveniles. This provision is mandatory. Under s. 958.04, F.S., convicted persons meeting certain criteria may qualify for a youthful offender sentence. 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. Currently, this section exempts youth committing capital or life felonies from a youthful offender sentence.

HB 1061 would create a minimum mandatory sentence for youths 15 years of age or younger of eight years in a youthful offender facility if the juvenile has no prior adjudications for offenses related to battery, child abuse, cruelty to animals or any offense specified in s. 775.084(1)(b)(1), F.S., relating to violent career criminals, habitual offenders, and habitual violent offenders. Such juveniles would be required to serve 8 years in a youthful offender facility and then eligible for release on parole.

The Parole Commission would be responsible for reviewing the child for release. The commission would also be charged with conducting an interview with the child within 8 months after initial confinement in execution of the judgment, however, the child would not be eligible for release for eight years. The child’s case must be reviewed every 2 years for eligibility for parole release. If a child has not been granted release by the time he or she reaches 25 years of age, the child must be transferred from the facility for youthful offenders to an appropriate facility with adults.

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

STORAGE NAME: h1061.ps.doc
DATE: March 30, 2004

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 type="checkbox"/> | No <input checked="" 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:

No, the bill will have the affect of reducing the possible penalty for juveniles 15 years of age or younger who commit an offense punishable by death or life imprisonment.

B. EFFECT OF PROPOSED CHANGES:

Under s. 985.225(3), F.S., a child of any age indicted by a grand jury for an offense punishable by death or by life in prison must be "tried and handled in every respect as an adult." The child must also be sentenced as an adult. This transfer to the adult system is different from the discretionary transfers for other offenses which allow a prosecutor a certain amount of leeway to direct file juveniles. This provision is mandatory.

Under s. 958.04, F.S., convicted persons meeting certain criteria may qualify for a youthful offender sentence. 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

Chart of Current Youthful Offender Facilities Maintained by DOC

Year Open	Correctional Institutions	Gender of Inmates	Population Type	County	Inmate Population as of 6/30/03
1997	Lake City CF	M	YO	Columbia	349
2002	Taylor CI	M	YO	Taylor	480

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. "

1979	Lancaster CI	M	YO	Gilchrist	551
1987	Sumter BTU	M	YO	Sumter	83
1978	Brevard CI	M	YO	Brevard	1,009
1997	Lowell CI	F	YO	Marion	9
1976	Hillsborough CI	M	YO	Hillsborough	306
1976	Indian River CI	M	YO	Indian River	372

Recently, several cases have resulted in increased scrutiny of Florida’s treatment of youths who commit serious offenses. In 1999, twelve-year-old Lionel Tate was arrested for the murder of six-year-old Tiffany Eunick. He was tried and convicted and given a mandatory life sentence. The Fourth District Court of Appeals in Tate v. State, 864 So.2d 44 (Fla 2nd DCA 2003) reversed his conviction on technical grounds. However, in discussing the facts of the offense, the court noted the especially cruel nature of the attack:

“The evidence was clear that the victim was brutally slain, suffering as many as thirty-five injuries, including a fractured skull, brain contusions, twenty plus bruises, a rib fracture, injuries to her kidneys and pancreas, and a portion of her liver was detached. It was undisputed that it would take tremendous force to inflict these injuries. None of the experts, not even those for the defense, believed that the injuries were consistent with ‘play fighting’ or that they were accidentally inflicted.” Id at 47.

Under current law, there is no parole in Florida. Ch. 948, F.S. provides for community control of those who complete the mandatory 85% of sentences to be released into the community, however, parole was abolished in 1983.

HB 1061 would create a minimum mandatory for youths 15 years of age or younger of eight years in a youthful offender facility if the juvenile has no prior adjudications for offenses related to battery, child abuse, cruelty to animals or any offense specified in s. 775.084(1)(b)(1), F.S., relating to violent career criminals, habitual offenders, and habitual violent offenders. Such juveniles would be required to serve 8 years in a youthful offender facility.

The Parole Commission would be responsible for reviewing the child for release. The commission would also be charged with conducting an interview with the child within 8 months after initial confinement in execution of the judgment, however the child will have to serve a minimum of eight years prior to being eligible for parole. The child’s case shall be reviewed every 2 years for eligibility for parole release. If a child has not been granted release by the time he or she reaches 25 years of age, the child must be transferred from the facility for youthful offenders to an appropriate facility with adults.

C. SECTION DIRECTORY:

Section 1. amending s. 985.225, F.S. to provide for a minimum mandatory at a youthful offender facility for certain juveniles and giving them the ability to be released on parole.

Section 2. providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
 - None.

2. Expenditures:

The Department of Corrections anticipate a minimal fiscal impact for this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The purpose of the youthful offender sentencing provisions is to provide a shorter "shock period of incarceration" for offenders who may benefit from such a sentence as opposed to a lengthy prison term. s. 958.045(2), F.S. Currently, life felons and capital felons are ineligible for the program. s. 958.04(1)(c), F.S. The bill would permit juveniles otherwise ineligible because of the serious nature of their offenses to serve a minimum eight year sentence in a youthful offender facility. The bill would reduce a potential penalty for a life or capital crime, if committed by a child 15 years or younger, from life in prison to 8 years. In addition, the bill would include youths who have committed the most serious offense possible under state law in programs with youth currently committing less serious offenses. The inclusion of these offenders does not comport with the current target of the youthful offender sentences which is to divert youths from incarceration when a short "shock" will suffice.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES