SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 224

SPONSOR: Senators Crist, Siplin, and Wilson

SUBJECT: Death Sentence

DATE: March 29, 2004 REVISED: 04/13/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 224 provides that a person 18 years of age or older when that person committed a capital crime may be sentenced to death. If such person is not sentenced to death, the penalty is life imprisonment without possibility of parole (as provided in current law). The bill also provides that no person younger than 18 years of age when that person committed a capital crime may be sentenced to death. Again, the penalty for such person is life imprisonment without possibility of parole (as provided in current law).

This bill creates s. 921.1415, F.S., and substantially amends s. 775.082, F.S.

II. Present Situation:

A. Minimum Age Threshold for Imposing a Death Sentence

According to the Death Penalty Information Center (DPIC)[1], "[t]he first execution of a juvenile offender was in 1642 with Thomas Graunger in Plymouth Colony, Massachusetts. In the 360 years since that time, a total of approximately 365 persons have been executed for juvenile crimes, constituting 1.8 percent of roughly 20,000 confirmed American executions since 1608. Twenty-two of these executions for juvenile crimes have been imposed since the reinstatement

[1] Although DPIC is an advocacy group (opposing the death penalty), it does not appear to have been criticized by any source for the *particular* statistical information provided in this analysis. Since this particular statistical information can be verified for accuracy by organizations advocating the death penalty, which presumably would note and criticize inaccuracies if there were any, the absence of such criticism is indicative, though not determinative, of the reliability of the particular statistical information.

of the death penalty in 1976. These 22 recent executions of juvenile offenders make up about 2% of the total executions since 1976."[2]

The DPIC lists 2 federal jurisdictions (civilian government and the military) and 19 states as requiring that a person be at least 18 years of age when he or she committed a capital crime before a death sentence may be imposed for that crime. The states listed are California, Colorado, Connecticut, Illinois, Indiana, Kansas, Maryland, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, South Dakota, Tennessee, Washington, and Wyoming.

The DPIC lists 5 states as requiring that a person be at least 17 years of age when he or she committed a capital crime before a death sentence may be imposed for that crime: Florida; Georgia; New Hampshire; North Carolina; and Texas. Regarding Florida, the DPIC states that the minimum age has been set by a Florida Supreme Court decision interpreting the Florida Constitution, and the minimum age "may have been lowered to 16 by a 2002 referendum."

The DPIC lists 14 states as requiring that a person be at least 16 years of age when he or she committed a capital crime before a death sentence may be imposed for that crime: Alabama; Arizona; Arkansas; Delaware; Idaho; Kentucky; Louisiana; Mississippi; Nevada; Oklahoma; Pennsylvania; South Carolina; Utah; and Virginia. Of these states, Alabama, Kentucky, and Virginia appear to have statutorily provided for a minimum age; in the remainder of the states, the minimum age appears to have been established by a 1988 United States Supreme Court decision.

The DPIC lists Puerto Rico, the District of Columbia, and 12 states as having no death penalty. The states listed are Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.

According to the DPIC, based on Death Row population figures it states are accurate as of December 31, 2003, there are 73 persons on Death Row in America for a capital crime committed when they were a juvenile. According to the Florida Department of Corrections, there are presently four offenders on Florida's Death Row for capital crimes committed as a juvenile.

B. Statutory Authority for Imposition of a Death Sentence on a Juvenile

Section 985.225(1), F.S., provides, in part, the following:

> (1) A child of any age who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the court as set forth in s. 985.219(8)

[2] Victor L. Streib, a law professor at Ohio Northern University College of Law, states that 21 of the 22 offenders were age 17 at the time they committed their capital crimes (one offender was age 16 at the time he committed his capital crime), and the periods these offenders waited on Death Row before being executed "ranged from 6 years to over 20 years, resulting in the age at execution ranging from 23 to 38." Streib, Victor L. The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973-December 31, 2003 (http://www.law.onu.edu/faculty/streib) (2004).

The Florida Department of Corrections' website reports that the last person who was a juvenile at the time of his execution was Lacy Stewart, who was 17 years of age when he was executed in 1948.

> unless and until an indictment on the charge is returned by the grand jury. When such indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as an adult:
> (a) On the offense punishable by death or by life imprisonment....

Section 985.225(3), F.S., provides, in part, that "[if]the child is found to have committed the offense punishable by death or life imprisonment, the child shall be sentenced as an adult."

Section 775.082(1), F.S., provides that "[a] person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141, F.S., results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole."

Florida statutory law does not articulate any specific minimum-age threshold for imposition of a death sentence. However, the Florida Supreme Court has held that imposition of a death sentence on a person who was 16 years of age or younger when that person committed a capital crime is constitutionally barred. (See discussion, supra.)

C. Age as a Mitigator

Section 921.141(6)(g), F.S., provides that the "age of the defendant at the time of the crime" is a circumstance that can be raised in mitigation of a death sentence. The Florida Supreme Court has stated that "the closer the defendant is to the age where the death penalty is constitutionally barred, the weightier this statutory mitigator becomes." *Urbin v. State*, 714 So.2d 411, 418 (Fla. 1998). *See Bell v. State*, 841 So.2d 329, 334 (Fla. 2002).

D. The 2002 Amendment to Florida's Constitution to Prohibit "Cruel and Unusual" Punishments

In the 2002 General Election, Florida voters approved an amendment to Article I, Section 17, of the Florida Constitution that, among other things, prohibits "cruel and unusual" punishments. (This amendment took effect January 7, 2003.) The Eighth Amendment of the United States Constitution also prohibits "cruel and unusual" punishments. Prior to the 2003 amendment of Section 17, that section prohibited "cruel or unusual" punishments.

The Florida Supreme Court has stated that the "cruel or unusual" punishment prohibition of the former Section 17 was more expansive than the Eighth Amendment.

> Because the clause contains the conjunction "or," it has been interpreted to mean that our state's constitutional framers intended alternative prohibitions or guarantees. The use of the disjunctive provides protection against both "cruel punishments" and "unusual punishments." *Allen v. State*, 636 So.2d 494, 497 n. 5 (Fla.1994): *Tillman v. State*, 591 So.2d 167, 169 n. 7 (Fla. 1991); see also *Armstrong v. Harris*, 773 So.2d 7, 17 n. 26 (Fla.2000), cert. denied, 532 U.S. 958, 121 S.Ct. 1487, 149 L.Ed.2d 374 (2001). Thus, the Florida Constitution provides a greater freedom in this regard than does the federal. "In short: '[T]he federal Constitution ... represents the floor for basic freedoms; the state

> constitution, the ceiling.'" *Traylor v. State*, 596 So.2d 957, 962 (Fla.1992) (quoted in *Armstrong*, 733 So.2d at 17).

Philipps v. State, 807 So.2d 713, 718-719 (Fla. 2d DCA 2002) (footnote omitted).

The Second District in *Philipps* further noted the following:

> Although the concept that the Florida Constitution provides a ceiling for basic freedoms has been outlined by the Florida Supreme Court in *Traylor* and *Armstrong*, the court has not fully delineated the contours of those rights in other cases. By and large, the Florida analysis of what constitutes a "cruel or unusual" penalty has followed the federal "cruel and unusual" analysis....

Philipps, 807 So.2d at 719.

E. Federal and Florida Case Decisions

Where the Florida Supreme Court has indicated a difference between the former Section 17 and the Eighth Amendment is in relation to the proportionality review it conducts in capital cases and the issue of imposing a death sentence on a person who committed a capital crime as a juvenile (hereinafter referred to as the "minimum-age issue"). To date, case law which discusses or interprets Section 17 in relation to proportionality review and the minimum age issue is limited to discussion or interpretation of Section 17 prior to its 2003 amendment.

"Proportionality review" has been described by the Florida Supreme Court as a consideration of the "totality of circumstances" in a capital case and a comparison of that case with other capital cases. *Urbin*, 714 So.2d at 416. Proportionality review is not required under the United States Constitution, *see Pulley v. Harris*, 465 U.S. 37 (1984), but the Florida Supreme Court has held that it has a "variety of sources in Florida law," including the prohibition against "unusual" punishments in the former Section 17.

> The requirement that death be administered proportionately has a variety of sources in Florida law, including the Florida Constitution's express prohibition against unusual punishments. (footnote omitted) Art. I, Sec. 17, Fla. Const. It clearly is "unusual" to impose death based on facts similar to those in cases in which death previously was deemed improper. *Id.* Moreover, proportionality review in death cases rests at least in part on the recognition that death is a uniquely irrevocable penalty, requiring a more intensive level of judicial scrutiny or process than would lesser penalties. Art. I, Sec. 9, Fla. Const.; *Porter* [*v. State*, 564 So.2d 1060, 1064 (Fla.1990)].
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> Proportionality review also arises in part by necessary implication from the mandatory, exclusive jurisdiction this Court has over death appeals. Art. V, Sec. 3(b)(1), Fla. Const. The obvious purpose of this special grant of jurisdiction is to ensure the uniformity of death-penalty law by preventing the disagreement over controlling points of law that may arise when the district courts of appeal are the only appellate courts with mandatory appellate jurisdiction. *See id*. Thus, proportionality review is a unique and highly serious function of this Court, the purpose of which is to foster uniformity in death-penalty law.

Tillman v. State, 591 So. 2d 167, 169 (Fla. 1991) (bracketed citation provided by staff).

The minimum-age issue was first addressed by the United States Supreme Court in *Thompson v. Oklahoma*, 487 U.S. 815 (1988), in which the Court concluded that the Eighth and Fourteenth Amendments "prohibit the execution of a person who was under 16 years of age at the time of his or her offense." *Thompson*, 487 U.S. at 840. The decision relied on an analysis that focused on "three primary categories of factors": "relevant legislative enactments; past jury determinations; and proportionality of punishment based on the degree of culpability held by such young persons." J. Harrison, "The Juvenile Death Penalty In Florida: Should Sixteen-Year-Old Offenders Be Subject To Capital Punishment?", 1 *Barry L. Rev*. 159, 167 (Summer 2000). (footnote omitted).

Shortly after *Thompson*, the Florida Supreme Court in *LeCroy v. State*, 533 So.2d 750 (Fla. 1988), held that "there is no constitutional bar to the imposition of the death penalty on persons who are seventeen years of age at the time of the commission of the offense." *LeCroy*, 533 So.2d at 758. The Court's analysis focused primarily on relevant legislative enactments. The Court stated that "[w]hatever merit there may be in the argument that the legislature has not consciously considered and decided that persons sixteen years of age and younger may be subject to the death penalty, and that issue is not present here, it cannot be seriously argued that the legislature has not consciously decided that persons seventeen years of age may be punished as adults." *LeCroy*, 533 So. 2d at 757. The Court noted and distinguished *Thompson* from the case before it based on a number of factors, including that *Thompson* did not "suggest an intention to draw an arbitrary bright line" between 17-year olds and 18-year olds. *Id.*

The next decision by the Florida Supreme Court regarding the minimum-age issue focused on a person sentenced for a capital crime committed at age 15. In *Allen v. State*, 636 So.2d 494, 498 (Fla. 1994), the Court did not engage in any analysis of relevant legislative enactments as it had done in *LeCroy*. In a rather cursory analysis, the Court focused on the fact that there was a "scarcity of death penalties imposed on persons less than sixteen years of age." *Allen*, 636 So.2d at 497. On the basis of this fact, the Court concluded that "the death penalty is either cruel or unusual if imposed upon one who was under the age of sixteen when committing the crime," and such sentence is prohibited by former Section 17. In a footnote, the Court noted that under former Section 17, unlike the Eighth Amendment, alternatives were intended, citing to *Tillman*, *infra*. *Allen*, 636 So.2d at 497 n. 5. Finally, the Court remarked that it could "not countenance a rule that would result in some young juveniles being executed while the vast majority of others are not, even where their crimes are similar." *Id.* (footnote omitted)

While the *Allen* Court believed that *Thompson* also supported the results it had reached, it did not rely on *Thompson* in its analysis, *Allen*, 636 So.2d at 498 n. 7, nor did it rely on the Eighth Amendment, *see Brennan v. State*, 754 So.2d 1, 6 (Fla. 1999).

In *Stanford v. Kentucky*, 492 U.S. 361 (1989), the United States Supreme Court discerned "neither a historical nor a modern societal consensus forbidding the imposition of capital punishment on any person who murders at 16 or 17 years of age," and concluded that such punishment did not "offend" the Eighth Amendment. *Stanford*, 492 U.S. at 379. The Court engaged in the type of analysis it had used in *Thompson*.

Ten years after *Stanford*, the Florida Supreme Court again addressed the minimum-age issue. In *Brennan v. State*, 754 So.2d 1 (Fla. 1999), the Court held that the imposition of a death sentence on Brennan for a crime he committed when he was 16 years of age constituted "cruel or unusual punishment" under former Section 17. The Court agreed with Brennan that the reasoning in *Allen* compelled the same results in the instant case, which the Court found to be virtually identical to *Allen* "both because of the infrequency of the imposition of the death penalty on juveniles age sixteen at the time of the crime and because, since 1972, each death sentence imposed on a defendant who was sixteen at the time of the crime has been overturned by this Court." *Brennan*, 754 So.2d at 7. Therefore, the Court agreed that its decision in *Allen* interpreting the Florida Constitution compelled "the finding that the death penalty is cruel or unusual punishment if imposed on a defendant under the age of seventeen." *Id.*

The Court stated that the decision in *Stanford* was not binding on its state constitutional analysis, but that it was "mindful" that in that case "five members of the United States Supreme Court held that it was not per se cruel and unusual punishment under the Eighth Amendment to impose the death penalty on an individual sixteen or seventeen years of age at the time of the crime." *Id.* However, the Court believed that "there is an important aspect of the *Stanford* opinion that further supports our determination that the imposition of the death penalty in this case would be unconstitutional under both the Florida and the United States Constitutions...." *Brennan*, 754 So.2d at 8. The Court was persuaded that the *Stanford* holding was specific to the type of state laws reviewed in that case, and found those laws to be distinguishable from Florida's laws. *Id.*

The Court stated that in *Stanford*, Justice Scalia, the author of the plurality opinion, had noted the "individualized consideration" given to the defendant's age in the state laws it reviewed, e.g., laws requiring individualized consideration of the maturity and moral responsibility of a juvenile defendant before certifying the juvenile for trial as an adult. *Id*., quoting *Stanford*, 492 U.S. at 375. But see *Brennan*, 754 So.2d at 14, 21-22 (Harding, C.J., joined by Wells, J. and Overton, Senior Justice, concurring in part and dissenting in part) (Justice Harding argued that the majority had taken Justice Scalia's discussion of the individualized considerations out of context; if placed in context, the discussion indicated that Justice Scalia was only concerned with the general concept of individualized testing for maturity and moral responsibility, a concern that Justice Harding believed was addressed by the age mitigator in Florida law).

The Court noted that proportionality analysis required it "to compare similar defendants, facts and sentences," but found it difficult to conduct such analysis because "the death penalty has not been upheld for any other defendant who was sixteen years old at the time of the crime...." *Brennan*, 754 So.2d at 10. The Court found this difficulty "highlights the inherent problems in upholding the death penalty under these circumstances." *Id.*

The United States Supreme Court has not addressed the minimum-age-issue since its opinion in *Stanford*, though individual judges have discussed the issue. *See e.g*., *In re Stanfor*d, 123 S.Ct. 472 (Mem.) (2002) (Justice Stevens, dissenting, joined by Justices Souter, Ginsburg and Breyer). The Florida Supreme Court has not addressed the minimum-age issue since *Brennan*.

The 2003 amendment of former Section 17 does raise a question regarding its possible effect on the *Brennan* decision and the *Allen* decision. Both cases interpreted former Section 17 as it

appeared in the Florida Constitution prior to the 2003 amendment.[3] The 2003 amendment requires that the prohibition against "cruel or unusual" punishment, and the prohibition against "cruel and unusual" punishment, be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against "cruel and unusual" punishment provided in the Eighth Amendment to the United States Constitution. However, the Florida Supreme Court interprets what the United State Supreme Court has stated in its decisions. This is an important point because, while *Stanford*, as interpreted in *Brennan*, wasn't binding in *Brennan*, the Court might adopt that interpretation of *Stanford* in a future case involving an Eighth Amendment challenge to the imposition of a death sentence on a person who committed a capital crime at age 16 or 17. The Court believed that *Stanford*, as the Court interpreted *Stanford*, supported its decision in *Brennan* in regard to imposing a death sentence on a person who committed a capital crime at age 16. Thus, even if the Court, in a future case, were to determine that the holding in *Brennan* was no longer good law because it relied on the "cruel or unusual" punishment clause of the former Section 17, it might still conclude that the Eighth Amendment barred application of the death penalty to 16 or 17-year-olds, relying on its interpretation of *Stanford* in *Brennan*, notwithstanding its decision in *LeCroy*.

Conversely, were the Court to adopt Justice Harding's interpretation of *Stanford* in the *Brennan* case, it might hold that there is no constitutional bar on imposing a death sentence on a person who committed a capital crime at age 16 and *LeCroy* would likely remain controlling precedent on imposing a death sentence on a person who committed a capital crime at age 17, essentially the state of the law as it existed pre-*Brennan*. Staff notes that Chief Justice Anstead and Justice Wells are the only members of the current Florida Supreme Court who were involved in the *Brennan* opinion, and Justice Wells only concurred in the opinion insofar as affirming Brennan's guilt.

F. Life Imprisonment without Possibility of Parole

In regard to life imprisonment without parole for first degree murder, the Legislature clearly intended this sanction to be imposed "regardless of whether the offender is an adult or child." *Phillips v. State*, 807 So.2d 713, 719 (Fla. 2d DCA 2002). While the Supreme Court's reasoning in *Allen* was grounded "largely upon the historical fact that more than fifty years had elapsed since that penalty had been imposed" on a person under 17 years of age, "there has been no similar lapse" regarding juveniles receiving a sentence of life imprisonment without possibility of parole." *Phillips*, 807 So.2d at 720. "Sentences imposed on juveniles of life imprisonment are not uncommon in Florida Courts." *Blackshear v. State*, 771 So.2d 1199, 1201 (Fla. 4th DCA 2000).

[3] In 1998, Florida voters passed an amendment to Section 17 identical to the amendment they passed in 2002. A challenge to the ballot summary of that amendment was pending before the Court when it decided *Brennan*, but the Court did not consider the 1998 amendments to Section 17 in its analysis because this was a new issue not raised nor briefed on appeal, the ballot summary case was pending, and it had "serious questions" regarding the amendment's retroactive applicability. *Brennan*, 754 So.2d at 6 n.4. Subsequent to *Brennan*, the ballot summary was stricken, thereby nullifying the 1998 amendments. *Armstrong v. Harris*, 773 So.2d 7 (Fla. 2000).

G. State ex rel. Simmons v. Roper

The United States Supreme Court has recently granted certiorari to hear a case out of Missouri dealing with the minimum age issue. *State ex rel. Simmons v. Roper*, 112 S.W.3d 397 (Mo. 2003) cert. granted, *Roper v. Simmons*, 124 S.Ct. 1171 (U.S. Mo. Jan 26, 2004) (No. 03-633). In *Simmons*, the Missouri Supreme Court held that imposition of a death sentence on individuals less than 18 years of age violates the Eighth Amendment of the United States Constitution. The Court determined that *Stanford* and other United States Supreme Court cases cited by the Court did not preclude the Court from considering whether a national consensus now exists barring the death penalty for juveniles.

The Court stated that it was utilizing the analysis employed by the United States Supreme Court in *Atkins v. Virginia*, 536 U.S. 304 (2002) (issue involving imposition of a death sentence on a mentally retarded person) to determine whether a national consensus exists barring the death penalty for juveniles. It concluded there was such a national consensus based on several of its findings. The Court found that a total of 16 states (and the federal civilian and military courts) require a minimum age of 18 for imposition of the death penalty. If the 18 states that bar the death penalty are included, the total number is 28 states, the Court noted. The Court also found that no state had lowered the minimum age from 18 to 17 or 16 subsequent to *Stanford* and that many states had recently considered raising the minimum age from 17 to 18.

The Court also found that imposing the death penalty on juveniles was uncommon, indicating that only Missouri, Texas, Virginia, Georgia, Oklahoma, and Louisiana had actually executed a person who received a death sentence for a crime committed as a juvenile, and only Texas, Virginia, and Oklahoma had executed such a person since 1993. It further found that, since 1642, of the 366 persons executed for crimes committed as a juvenile, only 22 "... were carried out during the current era (1973-2003)" and 81 percent of that 22 came from Texas, Virginia, and Oklahoma. The Court stated that Alabama, Arizona, Arkansas, Delaware, Idaho, Kentucky, Mississippi, Nevada, Pennsylvania, South Dakota, Utah, and Wyoming, all of which "theoretically permit the death penalty for 16-year-olds," and Florida, New Hampshire, and North Carolina, all of which "theoretically permit it for 17-year-olds," had not performed such an execution "since the death penalty was re-established in 1976." *Id.* at 409. The Court stated that "[j]uveniles are so seldom executed that, other than perhaps in Texas and Virginia, the death penalty for juveniles has become so truly unusual that its potential application is more hypothetical than real." *Id.* at 410.

The Court noted that a "wide array" of groups oppose the death penalty for juveniles. *Id.* at 411. While not finding this opposition "dispositive," the Court found it "... to be consistent with the legislative and other evidence that current standards of decency do not permit the imposition of the death penalty on juveniles." *Id*. The Court also noted that views of the international community "... have consistently grown in opposition to the death penalty for juveniles." *Id.* The Court believed these views were evidenced by several sources. It found that "... Article 37(a) of the United Nations Convention on the Rights of the Child and several other international treaties and agreements expressly prohibit the practice." *Id.* It stated that, according to Amnesty International, "... officially sanctioned executions of juveniles have occurred in only two other countries in the world in the last few years, Iran and The Republic of the Congo (DRC)." *Id.* (citations omitted)

Finally, the Court undertook an independent analysis to determine whether the death penalty for juveniles was warranted. The Court determined that "... neither retribution nor deterrence provides an effective rationale for the imposition of the juvenile death penalty, and the risk of wrongful execution of juveniles is enhanced for reasons similar to that set out in *Atkins* in regard to the mentally retarded." *Id*. at 412. The Court relied primarily on statements in *Thompson* and *Eddings v. Oklahoma*, 455 U.S. 104 (1982), in which, according to the Court, the United Supreme Court recognized the "lesser culpability and developing nature of the adolescent mind." *Id.* Additionally the Court determined that "the deterrence function of the death penalty can have little application to juveniles, not just because of their lesser ability to reason and their lack of informed judgment, but because ... the death penalty on 16-year-olds and 17-year-olds has become so unusual in the last decade that 'the likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually non-existent.'" Id. at 413, quoting *Thompson*, 487 U.S. at 837. Further, the Court noted "the risk of wrongful execution is greater as to young offenders, who have had less time to develop ties to the community, less time to perform mitigating good works, and less time to develop a stable work history, than is true for adult offenders, and who are far more likely than adults to waive their rights and to give false confessions." *Id.*

III. Effect of Proposed Changes:

Senate Bill 224 creates s. 921.1415, F.S., which provides that a person 18 years of age or older when that person committed a capital crime may be sentenced to death. The bill also provides that no person younger than 18 years of age when that person committed a capital crime may be sentenced to death.

The bill also amends s. 775.082, F.S., Florida's general penalties section, to provide that a person convicted of a capital crime committed when that person was younger than 18 years of age must be sentenced to life imprisonment without possibility of parole. A person who is convicted of a capital crime committed when that person is 18 years of age or older must be sentenced to death if the proceeding to determine sentence according to s. 921.141, F.S., results in a death-sentence finding, otherwise that person must be sentenced to life imprisonment without possibility of parole. The specification of life imprisonment without possibility of parole as the penalty if a death sentence is not imposed or is not imposable is simply a restatement of current law. Under current law, life imprisonment without possibility of parole is the only sanction for a capital felony if a death sentence is not imposed or is not imposable.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There should not be an adverse fiscal impact as a result of this bill because of the limited number of offenders affected. According to the Florida Department of Corrections, there are presently four offenders on Florida's Death Row for capital crimes committed as a juvenile.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Opponents of imposing a death sentence on a person who commits a capital crime as a juvenile point to recent studies of the brain, some of which involve mapping of the brain via magnetic resonance imaging. Opponents contend that these studies indicate that a person's brain is undergoing development and refinement until that person reaches his or her early 20s. Opponents contend that due to "social and biological reasons, teens have increased difficulty making mature decisions and understanding the consequences of their actions." They further contend that "[t]his understanding does not excuse adolescents from punishments for violent crime, but it clearly lessens their culpability." "Adolescent Brain Development and Legal Culpability," American Bar Association (Spring 2003) and cited research studies.

VIII. Amendments:

None.