

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 type="checkbox"/> | N/A <input checked="" 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:

There is no statutory provision in current law which establishes a minimum age for the imposition of a death sentence. Rather, case law governs the issue. Currently in Florida, a death sentence cannot be imposed for a capital crime on anyone who was under 17 years of age at the time the crime was committed. In Brennan v. State, 754 So.2d 1 (1999) the Florida Supreme Court held that the imposition of a death sentence on a person convicted for a first degree murder committed when he 16 years of age, constitutes cruel or unusual punishment in violation of Article I, Section 17 of the Florida Constitution.¹

Although the Court in Brennan rested its ruling on the State Constitution, which until recently, prohibited cruel or unusual punishment, they also indicated that if the Federal Constitutional prohibition against cruel and unusual punishment had been applied, they would have reached the same result. The Court stated:

However, 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 United States Constitutions. Brennan, *supra* at 8..

The Stanford² opinion is a plurality U.S. Supreme Court opinion which held that it is not per se cruel and unusual punishment to execute a person 16 or 17 years of age at the time of the crime. The Florida Supreme Court distinguished the Stanford case from the facts of Brennan based on statutory differences between Florida's statutory scheme and the ones at issue in Stanford. With respect to these differences, the Florida Supreme Court stated in Brennan:

The Legislature's failure to impose a minimum age, the legislative mandate that a child of any age indicted for a capital crime shall be subject to the death penalty, and the failure to set up a system through our juvenile transfer statutes that "ensure[s] individualized consideration of the maturity and moral responsibility" render our statutory scheme suspect under the federal constitution and the reasoning of Stanford as it applies to sixteen-year-old offenders. (citation omitted) This also distinguishes our statutory scheme from the Virginia statute

¹ In November of 2001, the voters approved a constitutional amendment which changed the provision of Article I, Section 17 of the Florida Constitution from prohibiting cruel or unusual punishment to prohibiting cruel **and** unusual punishment in order to conform to the federal constitution.

² Stanford v. Kentucky, 109 S.Ct. 2969 (1989).

recently upheld as constitutional by the Virginia Supreme Court. (citation omitted)

...
If given literal effect, our statutory scheme would unconstitutionally authorize the imposition of the death penalty on a child of any age.

Since the issuance of the Brennan opinion, nothing has changed with respect to Florida's statutory scheme that would provide any basis for concluding that the Florida Supreme Court would uphold a death sentence imposed on a person who was 16 years of age at the time of the crime, regardless of whether the standard applied was cruel or unusual punishment, or cruel and unusual punishment.

The bill provides that the death sentence is an authorized punishment for persons who are 18 years of age or older at the time of the commission of a capital crime but is not an authorized punishment for any person who, at the time of the commission of the crime, was less than 18 years of age. A person who is less than 18 years of age at the time of the commission of a capital crime will receive a life sentence without the possibility of parole. The bill does not affect current law that provides that a person age 18 or older who is convicted of a capital crime (involving a death) would be subject to either a death sentence or life imprisonment without possibility of parole.

C. SECTION DIRECTORY:

Section 1. Creates s. 921.1415, F.S.; provides that death sentence is authorized punishment only for offenders who were 18 years of age or older at the time of the commission of the capital crime but not for offenders younger than 18.

Section 2. Amends s. 775.082, F.S. to conform.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Criminal Justice recommended the adoption of an amendment to change the age of 18 to the age of 17. Under the amendment, no person under the age of 17 when he or she committed a capital crime may be sentenced to death. The Committee on Public Safety & Crime Prevention voted against the recommended amendment and, as a result, restored the age of 18 that was contained in the original bill.