

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 CS Youthful Offenders
SPONSOR(S): Porth; Gottlieb
TIED BILLS: none **IDEN./SIM. BILLS:** SB 646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Juvenile Justice Committee	4 Y, 1 N, w/CS	White	White
2) Criminal Justice Committee	7 Y, 0 N	Bond	Kramer
3) Justice Appropriations Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

The Youthful Offender Act provides a sentencing alternative for an offender guilty of a non-capital or non-life felony that was committed before his or her 21st birthday. If classified as a youthful offender, the offender may only receive one of the following four types of sanctions: (1) probation or community control; (2) incarceration for up to 364 days, as a condition of probation or community control; (3) a split sentence that provides for incarceration followed by probation or community control; or (4) commitment to the custody of the Department of Corrections. The total sanction may not exceed six years.

The Department of Corrections must offer a boot camp program for youthful offenders. If an offender successfully completes boot camp, the court must place the offender on probation. In the offender later violates that probation, the court may sentence the offender to no more 364 days in jail, rather than choosing one of the other sanctions originally available to the court in the youthful offender's case.

This bill removes the 364 day limit for boot camp graduates, providing that the court may impose any of the four sanctions that it could have originally imposed. The bill also requires that the state attorney be notified that the department is seeking court approval to place an offender in boot camp, and makes technical changes to the Youthful Offender Act.

The Criminal Justice Impact Conference has not determined the prison bed impact of this bill.

The bill takes effect on July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes personal responsibility – Under the bill, sanctions greater than those authorized in current law may be imposed by a trial court for an offender who has violated his or her probation following the completion of the Department of Correction's (DOC's) basic training program.

B. EFFECT OF PROPOSED CHANGES:

Youthful Offenders: Chapter 958, F.S., contains Florida's Youthful Offender Act, the purpose of which is to provide a sentencing alternative¹ that will improve the chances for rehabilitation of an offender who: (1) is at least 18 years of age or has been transferred for criminal prosecution pursuant to ch. 985, F.S.; (2) has entered a plea to, or has been found guilty of, a felony, other than a capital or life felony, that was committed before the offender's 21st birthday; and (3) has not been previously sentenced as a youthful offender by a court.²

If the court elects to adjudicate and sentence a defendant as a youthful offender, it may: (1) impose probation or community control; (2) impose incarceration for up to 364 days, as a condition of probation or community control; (3) impose a split sentence that provides for incarceration followed by probation or community control; or (4) commit the youthful offender to the custody of the DOC.³ These sentencing options are the exclusive sanctions that may be imposed for a court-adjudicated youthful offender,⁴ and, in general, the total sentence (probation or community control and incarceration) length may be no longer than six years.⁵

In cases where the court has elected adult, rather than youthful offender, adjudication and sentencing, the DOC may administratively classify a defendant as a youthful offender if that person: (1) is at least 18 years of age or has been transferred for criminal prosecution pursuant to ch. 985, F.S.; (2) has not been previously sentenced as a youthful offender by a court; (3) is less than 24 years old; and (4) has received a sentence that does not exceed 10 years.⁶ Unlike court youthful offender adjudication, which results in limited sentence length and the sealing of court records, DOC youthful offender classification only determines the programs and institutions in which youthful offenders may be placed.⁷ Such DOC classification does not affect the original sentence imposed by the court.⁸

Boot Camp: Section 958.045, F.S., requires the DOC to create a basic training program, commonly referred to as "boot camp,"⁹ for youthful offenders, which lasts at least 120 days and includes marching drills, calisthenics, a rigid dress code, manual labor assignments, physical training, personal development training, general education and adult basic education courses, and drug counseling and other rehabilitation programs.¹⁰ In determining eligibility for the boot camp, the DOC must find that a youthful offender: (1) has no physical limitations that preclude strenuous activity; (2) is not impaired; and (3) has not previously been incarcerated in a federal or state correctional facility. Additionally, the DOC must consider the offender's criminal history and potential rehabilitative benefits of "shock"

¹ In *Allen v. State*, 526 So.2d 69, 70 (Fla. 1988), the Court explained that youthful offender sentencing is more stringent than the juvenile system, but less harsh than the adult system.

² Sections 958.021 and 958.04(1), F.S.

³ Section 958.04(2), F.S.

⁴ *Whitlock v. State*, 404 So.2d 795 (Fla. 3rd DCA 1981).

⁵ Section 958.04(2), F.S.

⁶ Sections 958.03(5) and 958.11(4), F.S.; *Thomas v. State*, 825 So.2d 1032 (Fla. 1st DCA 2002).

⁷ *Lezcano v. State*, 586 So.2d 1287 (3rd DCA 1991).

⁸ *Johnson v. State*, 586 So.2d 1322, 1324-1325 (Fla. 2nd DCA 1991).

⁹ *Lee v. State*, 884 So.2d 460 (Fla. 4th DCA 2004).

¹⁰ Section 958.045, F.S.

incarceration. If the statutory criteria are satisfied, space is available, and the DOC wishes to place the youthful offender into a boot camp program, the DOC must submit a written request to the sentencing court's seeking approval for placement of the youthful offender in a boot camp program.¹¹ If a youthful offender satisfactorily completes the boot camp: (1) the court must issue an order modifying the offender's sentence and placing the offender on probation; and (2) the releasing authority must establish a release date for the offender within 30 days following program completion.¹²

In the event a youthful offender subsequently violates his or her probation after the boot camp, the court, pursuant to s. 958.045(5)(c), F.S., may "... revoke probation and impose any sentence that it might have originally imposed **as a condition of probation.**" (emphasis added). Section 958.04(2)(b), F.S., provides that one of the sentencing options that a court may originally impose is, "... a period of incarceration **as a condition of probation** ...," for up to 364 days.¹³ (emphasis added). The Fourth District Court of Appeals has explained that, "Read together, these two [sections of] statutes have been consistently construed as limiting to 364 days the period of incarceration which may be imposed following successful completion of a boot camp."¹⁴ Most recently in March 2004, the Third District Court of Appeals stated:

The language of section 958.045(5)(c) may warrant further review by the legislature. We doubt that the legislature actually intended the result this language has created. We are inclined to believe that the legislature intended to permit the court to impose any sentence "that it might have originally imposed." Indeed, a judge may be hesitant to recommend boot camp in an effort to rehabilitate a youth if the judge realizes that the youth's sentence upon a future violation of probation will be limited to such a short term of incarceration. Nevertheless, the legislature has not amended the statutes since our opinion in *Bloodworth*, 769 So.2d 1117, and we are constrained by the plain language of the statutes.¹⁵

Effect of Bill

This bill amends s. 958.045(5)(c), F.S., to remove the phrase "as a condition of probation." This amendment will have the effect of removing the 364-day jail limit found to exist by Florida courts and will permit the court to sentence a youthful offender who has violated probation after boot camp to any of the four sentencing alternatives that were originally available to the judge under s. 958.04(2), F.S.

This bill also amends s. 958.045(2), F.S., to specify that the state attorney must be notified whenever the department seeks to place a youthful offender into a boot camp program.¹⁶

This bill also makes grammatical corrections and amends ss. 958.045(8) and 958.11, F.S., to substitute the term "department," meaning the DOC, for obsolete references to the Office of the Assistant Secretary for Youthful Offenders and the Population Movement and Control Coordinator.

C. SECTION DIRECTORY:

Section 1. Amends s. 958.045, F.S.; regarding sanctions for violating probation.

Section 2. Amends s. 958.11, F.S.; to removes obsolete references.

¹¹ Section 958.045(2), F.S.

¹² Section 958.045(5)(c) and (8)(d), F.S.

¹³ *Bloodworth v. State*, 769 So.2d 1117 (Fla. 2nd DCA 2000); *Burkett v. State*, 816 So.2d 767 (Fla. 1st DCA 2002).

¹⁴ *Lee v. State*, 884 So.2d 460, 461 (Fla. 4th DCA 2004).

¹⁵ *Blaxton v. State*, 868 So.2d 620, 621 (Fla. 2004).

¹⁶ The department currently takes the odd position that it does not need to notify the state attorney when the department seeks court approval to place an offender into a boot camp program, if the offender was previously classified by the court as a youthful offender.

Section 3. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a prison bed impact as it will permit youthful offenders to be sentenced to prison, rather than jail, when that offender has violated his or her probation following his or her completion of the DOC's basic training program. The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this bill on the DOC.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may result in an indeterminate reduction in local government costs for jails, as the bill will permit youthful offenders to be sentenced to prison, rather than jail, when that offender has violated his or her probation following his or her completion of the DOC's basic training program.

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 counties or cities to spend funds or take action 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:

Article I, s. 10, Fla.Const., prohibits passage of an ex post facto law. Accordingly, the portion of this bill increasing the possible penalty for violation of probation or community control by a boot camp graduate may only apply to an offender who committed his or her offense on or after the effective date of the bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

While this bill may increase the penalties that may be imposed upon a youthful offender who is a boot camp graduate and who subsequently violates probation, such boot camp graduates still are not treated as harshly as other youthful offenders who violate probation. Section 958.14, F.S., provides that a youthful offender who violates probation or community control may be sentenced up to the statutory maximum sentence. However, as amended by this bill, a boot camp graduate may only be sentenced up the original sentence that may have been imposed as a youthful offender.¹⁷

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 23, 2005, the Juvenile Justice Committee adopted a strike everything amendment that removed the bill's provisions regarding the placement of youthful offenders in DJJ boot camps and regarding notification of state attorneys when court approval for such placement is sought. The strike everything amendment retains the bill provision that removes current law's 364-day jail sentence limitation for youthful offenders who have violated probation following the completion of the DOC's basic training program. Additionally, it amends ss. 958.045(8) and 958.11, F.S., by removing references to an obsolete office and obsolete position titles and replacing the language with a reference to the DOC.

¹⁷ “[Y]outhful offenders maintain youthful offender status even when they violate a condition of community control.” *State v. Arnette*, 604 So.2d 482, 484 (Fla. 1992)(limiting sentence against a youthful offender who violated community control to 6 years).