

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.)

Prepared by: Criminal Justice Committee

BILL: SB 1386

INTRODUCER: Criminal Justice Committee

SUBJECT: Resentencing Youthful Offenders Who Violate the Terms of Probation

DATE: January 31, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cannon	CJ	Favorable
2.	_____	_____	JA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary

This bill amends s. 958.045(5)(c), F.S., to clarify that a youthful offender who completes basic training and then violates the conditions of probation may be sentenced to any of the four sentencing options originally available to the court. Recent district courts of appeal decisions have held that, under current law, a court may only sentence the probation violator to one option, a term of incarceration that does not exceed 364 days, not any of the four original sentences. This legislation seeks to remedy this incongruity in the statutes which the appellate courts have noted in several opinions. This bill is the result of an interim project which staff conducted during the summer. An in-depth analysis of the issue can be read in Interim Project Report 2006-113, Resentencing Youthful Offenders Who Violate the Terms of Probation.

II. Present Situation:

Youthful Offender Act

The Florida Youthful Offender Act was adopted in 1978. It was created to improve the possibilities of rehabilitating and reintegrating young offenders into society over a short span of time. The trial court may sentence someone as a youthful offender who: is at least 18 years old or who has been transferred for criminal prosecution pursuant to ch. 985, F.S.; has entered a plea or been found guilty of a felony other than a capital or life felony which was committed before the defendant's 21st birthday; and has not been previously classified as a youthful offender.¹ The statutes also provide that the Department of Corrections may classify someone as a youthful offender using slightly different criteria.²

¹ s. 958.04(1), F.S.

² s. 958.11(4), F.S.

If the court elects to sentence the defendant as a youthful offender there are four exclusive options available. The court may place the defendant on probation or community control, impose a period of incarceration up to 364 days as a condition of probation or community control, impose a split sentence of incarceration followed by probation or community control, or commit the offender to the custody of the Department of Corrections.³ Generally the total length of the sentence under any of these options may not exceed six years.

Basic Training Program

In 1994, the Legislature authorized the creation of basic training programs for youthful offenders which were modeled after military boot camps. The programs were to last a minimum of 120 days and were to include marching drills, calisthenics, a strict dress code, manual labor, physical training, and obstacle courses. Training was also to be provided in decision making and personal development, along with educational opportunities, drug counseling, and rehabilitation programs. This was to be accomplished amid a strict disciplinary program in which the general inmate population privileges were restricted.⁴

After Basic Training

When an offender successfully completes basic training, the statutes provide that the department must notify the sentencing court and the court is then required to issue an order which modifies the original sentence and places the offender on probation. The offender is then expected to complete the terms of his or her probation.⁵

Recent Litigation and Statutory Interpretation

Problems have arisen when youthful offenders complete the basic training program but then violate the conditions of their probation. Beginning in 2000, with the *Bloodworth* decision, the Second District Court of Appeal interpreted ss. 958.04(2)(b) and 958.045(5)(c), F.S., to prohibit the sentencing courts from imposing any of the four sentencing options originally available to the sentencing court when an offender violates the terms of his or her probation. Instead, the court held that the only sentence available to the court is a period of incarceration that does not exceed 364 days.⁶

The courts have reasoned that s. 958.045(5)(c), F.S., provides that “if the offender violates the conditions of probation, the court may revoke probation and impose any sentence that it might have originally imposed *as a condition of probation*.” However, s. 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*...” that does not exceed 364 days. Accordingly, the court reasoned that the plain language of the statute leads to the conclusion that upon violating probation imposed after basic training, a youthful offender “may only receive up to 364 days in a specified facility as a penalty.”⁷

Other appellate courts have reached the same conclusion that the 364 day incarceration is the exclusive remedy for probation violators.

³ s. 958.04

⁴ s. 958.045, F.S.

⁵ s. 958.045(5)(c), F.S.

⁶ *Bloodworth v. State*, 769 So. 2d 1117, (Fla. 2d DCA 2000).

⁷ *Id.*

In *Blaxton v. State* the Second District Court of Appeal revisited this statute four years after it first issued the *Bloodworth* decision and noted:

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*...⁸

Interim Project

During the interim period staff reviewed these statutes and the cases construing those statutes. Surveys were mailed to circuit court judges, state attorneys, the Department of Corrections, and public defenders for their input. Of the circuit judges surveyed, 53 of 55, or 96 percent, said that the statute needed to be amended to allow the courts greater discretion in sentencing and eliminate the language of s. 958.045(5)(c), F.S., which limits the sentence to the county jail option. Many judges noted that the courts and state attorneys are reluctant to sentence youthful offenders to basic training camp knowing that they can violate probation and receive a shorter sentence than they might have received if they had completed their probation.

III. Effect of Proposed Changes:

The bill amends s. 958.045(5)(c), F.S., to delete the phrase “as a condition of probation.” This change will permit the sentencing court to sentence a youthful offender who has violated the terms of his or her probation to any of the four dispositions originally available to the sentencing court. The practical result will be that courts will have the discretion to sentence probation violators to terms longer than 364 days in jail.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸ *Blaxton v. State*, 868 So. 2d 620 (Fla. 2d DCA 2004).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This same provision was part of CS/SB 646 in the 2005 Legislative Session. The Criminal Justice Impact Conference stated:

The Criminal Justice Impact Conference met on March 18 to consider the impact this legislation would have. They determined that this committee substitute would have a state prison impact. Specifically, they found the fiscal impact to be indeterminate, but minimal. This legislation might result in more probation violators being sentenced to longer sentences which would be served in prison rather than jail. Accordingly, prisons would experience an increase in their populations while jails might experience a decrease.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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