

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7135 PCB CRJU 06-04 Youthful Offenders

**SPONSOR(S):** Criminal Justice Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	7 Y, 0 N	Cunningham	Kramer
1) Criminal Justice Appropriations Committee	4 Y, 0 N	Sneed	DeBeaugrine
2) Justice Council	11 Y, 0 N	Cunningham	De La Paz
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### 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 21<sup>st</sup> 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 basic training program for youthful offenders. If an offender successfully completes basic training, the court must place the offender on probation. If the offender later violates that probation, the court is limited to sentencing the offender to no more than 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 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 completing basic training to any of the four sanctions that it could have originally imposed.

The Criminal Justice Impact Conference met on February 28, 2006 and determined that SB 1386, an identical bill, would have an indeterminate, yet minimal, fiscal impact on the prison bed population in the Department of Corrections. This bill 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.

The bill takes effect on July 1, 2006.

## 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**

The purpose of Florida's Youthful Offender Act is to provide a sentencing alternative<sup>1</sup> 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 21<sup>st</sup> birthday; and (3) has not been previously sentenced as a youthful offender by a court.<sup>2</sup>

Section 958.04, F.S., provides that courts who elect to adjudicate and sentence a defendant as a youthful offender 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.<sup>3</sup> These sentencing options are the exclusive sanctions that may be imposed for a court-adjudicated youthful offender<sup>4</sup>, and, in general, the total sentence (probation or community control and incarceration) length may be no longer than six years.<sup>5</sup>

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.<sup>6</sup> Unlike court youthful offender adjudication, which results in a 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.<sup>7</sup> Such DOC classification does not affect the original sentence imposed by the court.<sup>8</sup>

##### **Basic Training**

Section 958.045, F.S., requires the DOC to create a basic training program for youthful offenders (both those adjudicated as such by the court and those classified as such by the DOC), 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.<sup>9</sup> In determining eligibility for the basic training program, 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

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

<sup>2</sup> ss. 958.021, 958.04(1), F.S.

<sup>3</sup> s. 958.04(2), F.S.

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

<sup>5</sup> s. 958.04(2), F.S.

<sup>6</sup> ss. 958.03(5), 958.11(4), F.S.; *Thomas v. State*, 825 So.2d 1032 (Fla. 1<sup>st</sup> DCA 2002).

<sup>7</sup> *Lezcano v. State*, 586 So.2d 1287 (Fla. 3<sup>rd</sup> DCA 1991).

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

<sup>9</sup> s. 958.045, F.S.

correctional facility.<sup>10</sup> Additionally, the DOC must consider the offender's criminal history and potential rehabilitative benefits of "shock" incarceration.<sup>11</sup> If the statutory criteria are satisfied and space is available, the DOC must submit a written request to the sentencing court seeking approval for placement of the youthful offender in a basic training program.<sup>12</sup> If a youthful offender satisfactorily completes basic training: (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.<sup>13</sup>

In the event a youthful offender subsequently violates his or her probation after completing basic training, 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. (emphasis added).<sup>14</sup> 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 basic training."<sup>15</sup> 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.<sup>16</sup>

### 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 completing basic training to any of the four sentencing alternatives that were originally available to the judge under s. 958.04(2), F.S.

### C. SECTION DIRECTORY:

**Section 1.** Amends s. 958.045, F.S., deleting a provision limiting certain sentencing options available to the court following a violation of the conditions of probation by a youthful offender.

**Section 2.** This act takes effect July 1, 2006.

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<sup>10</sup> s. 958.045(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> ss. 958.045(5)(c) and (8)(d), F.S.

<sup>14</sup> *Bloodworth v. State*, 769 So.2d 1117 (Fla. 2<sup>nd</sup> DCA 2000); *Burkett v. State*, 816 So.2d 767 (Fla. 1<sup>st</sup> DCA 2002).

<sup>15</sup> *Lee v. State*, 884 So.2d 460, 461 (Fla. 4<sup>th</sup> DCA 2004).

<sup>16</sup> *Blaxton v. State*, 868 So.2d 620, 621 (Fla. 2<sup>nd</sup> DCA 2004).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Criminal Justice Impact Conference met February 28, 2006 and concluded that Senate Bill 1386, an identical bill, would have an indeterminate, yet minimal, prison bed impact on the Department of Corrections. See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

Because youthful offenders who have violated probation following completion of DOC's basic training program may be sentenced to prison rather than jail, the bill may result in an indeterminate decrease in jail capacity requirements. See fiscal comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The Department of Corrections states that approximately 200 youthful offenders successfully complete basic training each year and are released on supervision. Of these, approximately 22 percent violate the conditions of their supervision. In most instances, pursuant to current law, violators are sentenced to up to 364 days in county jail. This bill may have a prison bed impact in that it will permit youthful offenders who have violated probation following completion of DOC's basic training program to be sentenced to prison rather than jail.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the 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:

Art. 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 basic training program 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:**

A 2005, Senate Criminal Justice staff survey of circuit court judges revealed that the vast majority of judges want greater discretion in sentencing youthful offenders who violate probation following completion of DOC's basic training program. The survey further revealed that, as a result of the sentencing limitation, many judges are reluctant to sentence defendants as youthful offenders or to approve a youthful offender's placement in basic training. After reviewing the statutes, caselaw, and survey responses, the Senate Criminal Justice Committee concluded that s. 958.045(5)(c), F.S., be amended to remove the language limiting the trial court's discretion to sentence a youthful offender who violates the terms of his or her probation after completing basic training.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**