

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 887 Youthful Offenders  
**SPONSOR(S):** Alexander and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 782

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Bruno	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Scientific studies have revealed that the brain does not reach full maturity until a person's early 20's. Specifically, the executive functions of impulse control, response inhibition, planning ahead, risk avoidance, emotional regulation, and foreseeing consequences are among the last to develop cognitively. Immaturity in the development of these functions suggests decreased culpability for criminal conduct. Research further indicates that youth respond more favorably to rehabilitative efforts than adults.

A court may sentence a person as a youthful offender in certain circumstances. Youthful offender sentencing supersedes all other sentencing requirements under Florida law, including:

- Sentencing guidelines.
- A minimum mandatory sentence.
- The prohibition on withholding adjudication of guilt for a first degree felony.

A person is eligible for sentencing as a youthful offender if, among other requirements, he or she is younger than 21 years old at the time of sentencing. A court may sentence a youthful offender to a maximum sentence of six years, except that the sentence may not exceed the statutory maximum for the offense. Upon a technical violation of probation, which is a violation of a rule of probation rather than the commission of a new crime, a court remains bound by the six-year sentencing limit, including all credit for time served. A youthful offender, however, loses youthful offender status upon violating probation with a new crime and faces the statutory maximum penalty. The Department of Corrections must house youthful offenders in a special facility and offer a youthful offender basic training program.

HB 887 authorizes a court to sentence a person meeting all other criteria as a youthful offender if he or she was 21 or younger at the time the offense was committed. The bill puts no limits on when a person must be sentenced as a youthful offender, if he or she committed the crime while 21 years old or younger.

The bill may have a negative impact on the number of prison beds and a positive impact on the number of jail beds.

The bill provides an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Cognitive Development in Young People

Scientific studies have revealed that the brain does not reach full maturity until a person's early 20's.<sup>1</sup> Specifically, the executive functions of impulse control, response inhibition, planning ahead, risk avoidance, emotional regulation, and foreseeing consequences are among the last to develop cognitively.<sup>2</sup> Immaturity in the development of these functions suggests decreased culpability for criminal conduct. Research further indicates that youth respond more favorably to rehabilitative efforts than adults.<sup>3</sup>

Relying on scientific research in this field, the United States Supreme Court has held the following to be unconstitutional:

- Executing a person for a crime committed prior to reaching age 18.<sup>4</sup>
- Sentencing a person to life imprisonment without the possibility of parole for a crime committed prior to reaching age 18.<sup>5</sup>

##### Youthful Offender Sentencing in Florida

A court may sentence a person as a youthful offender in certain circumstances. Youthful offender sentencing supersedes all other sentencing requirements under Florida law,<sup>6</sup> including:

- Sentencing guidelines.
- A minimum mandatory sentence.<sup>7</sup>
- The prohibition on withholding adjudication of guilt for a first degree felony.<sup>8</sup>

A person is eligible for sentencing as a youthful offender if he or she:

- Is at least 18 years old or has been transferred to circuit court to be treated like an adult.
- Is found guilty of or pleas to a felony.
- Is younger than 21 years old at the time of sentencing.
- Has not been previously classified as a youthful offender.
- Has not been found guilty of a capital or life felony.<sup>9</sup>

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<sup>1</sup> American Bar Association Juvenile Justice Center, *Adolescence, Brain Development, and Legal Culpability* (Jan. 2004), [https://www.americanbar.org/content/dam/aba/publishing/criminal\\_justice\\_section\\_newsletter/crimjust\\_juvjus\\_Adolescence.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Adolescence.authcheckdam.pdf) (last visited Mar. 19, 2019); Malcolm Ritter and Associated Press, *Experts link teen brains' immaturity, juvenile crime*, ABC News <https://abcnews.go.com/Technology/story?id=3943187&page=1> (last visited Mar. 22, 2019).

<sup>2</sup> *Id.*; Brief of the American Medical Association and the American Academy of Child and Adolescent Psychiatry as *Amici Curiae*, at 16, *Graham v. Florida*, 560 U.S. 48 (2012).

<sup>3</sup> Malcolm Ritter and Associated Press, *Experts link teen brains' immaturity, juvenile crime*, ABC News <https://abcnews.go.com/Technology/story?id=3943187&page=1> (last visited Mar. 22, 2019).

<sup>4</sup> *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (“[A]s any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”).

<sup>5</sup> *Graham v. Florida*, 560 U.S. 48, 68 (2010) (“[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults.”); *Miller v. Alabama*, 567 U.S. 460 (2012).

<sup>6</sup> S. 958.04(2), F.S.

<sup>7</sup> *Eustache v. State*, 199 So.3d 484 (Fla. 4th DCA 2016).

<sup>8</sup> *Pacheco-Velasquez v. State*, 208 So.3d 293 (Fla. 3d DCA 2016); s. 775.08435, F.S.

<sup>9</sup> S. 958.04(1), F.S.

In 2008, the Legislature changed the calculation of the youthful offender age threshold from the age at the time the offense was committed to the age at the time the sentence is imposed.<sup>10</sup> In *Jackson v. State*, the Florida Supreme Court upheld this structure against an equal protection challenge, reasoning:

By requiring that a defendant be sentenced before the age of 21 in order to be eligible for youthful offender sentencing, section 958.04(1)(b) ensures that defendants entering the program are truly youthful. It also ensures that defendants eligible for the program will complete their sentence without being exposed to more experienced and sophisticated criminals during their incarceration. Because the statute bears a rational relationship to this legitimate government objective, it does not violate equal protection.<sup>11</sup>

A court may sentence a youthful offender to a maximum sentence of six years,<sup>12</sup> except that it may not exceed the statutory maximum for the offense.<sup>13</sup> The sentence may include up to six years of:

- Supervision on probation or community control, with or without an adjudication of guilt.<sup>14</sup>
- Supervision on probation or community control that includes a period of incarceration up to 364 days in a county detention facility, probation or restitution center, or community residential center as a condition of supervision.<sup>15</sup>
- A split sentence wherein the youthful offender is to be placed on probation or community control upon completing any specified period of incarceration.<sup>16</sup> If the incarceration period is to be served in a Department of Corrections (DOC) facility other than a probation and restitution center or community residential facility the term of imprisonment must be greater than 1 year but 4 years or less.<sup>17</sup>
- Imprisonment.<sup>18</sup>
- A county-operated boot camp program.<sup>19</sup>

A court may sentence a youthful offender who subsequently violates probation or community control up to the statutory maximum sentence for the offense if the violation is substantive,<sup>20</sup> meaning that the person committed a new crime.<sup>21</sup> However, if the violation is technical, which is a violation of a rule of probation rather than a separate criminal act,<sup>22</sup> a court may only sentence the person for up to six years,<sup>23</sup> including any credit for time served.<sup>24</sup>

#### *DOC Youthful Offender Classification*

DOC may classify a person as a youthful offender even if the court did not so sentence the person. A person eligible for youthful offender classification by DOC:

- Is an inmate in a DOC institution, facility, or program.
- Has not previously been classified as a youthful offender.
- Has not been found guilty of a capital or life felony.

<sup>10</sup> Laws 2008, c. 2008-250, § 7, eff. Oct. 1, 2008.

<sup>11</sup> 191 So.3d 423, 427-28 (Fla. 2014).

<sup>12</sup> S. 958.04(2), F.S.

<sup>13</sup> *Gross v. State*, 720 So.2d 578 (Fla. 1st DCA 1998) (court could not sentence a defendant to six years as a youthful offender for a third degree felony, which is punishable by up to five years).

<sup>14</sup> S. 958.04(2)(a), F.S.

<sup>15</sup> S. 958.04(2)(b), F.S.

<sup>16</sup> S. 958.04(2)(c), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> S. 958.04(2)(d), F.S.

<sup>19</sup> S. 958.046, F.S.

<sup>20</sup> S. 958.14, F.S.

<sup>21</sup> *West v. State*, 129 So.3d 1155, 1156 (Fla. 3d DCA 2014).

<sup>22</sup> *Id.*, *Swilley v. State*, 781 So.2d 458, 460 (Fla. 2d DCA 2001).

<sup>23</sup> Or the statutory maximum, whichever is shorter.

<sup>24</sup> S. 958.14, F.S.

- Is 24 or younger.
- Is serving a sentence that does not exceed 10 years.<sup>25</sup>

A DOC-designated youthful offender is subject to the same housing requirements as a court-sentenced youthful offender. Additionally, a DOC-designated youthful offender may qualify for the youthful offender basic training program and sentence reduction.

### Housing Requirements for Youthful Offenders

DOC must house a youthful offender, whether sentenced by a court or DOC-designated, in specially designated institutions and programs,<sup>26</sup> subject to the following exceptions for a youthful offender who is 18 or older who:

- Is convicted of a new felony crime;
- Becomes a serious management or disciplinary problem due to serious violations of department rules such that his or her original assignment is detrimental to the interests of the program and other inmates;
- Needs medical treatment, health services, or other specialized treatment not available at the youthful offender facility;
- Needs to be transferred outside of the state correctional system for services not provided by DOC; or
- Is to go to a community residential facility but there is no bed space available in a community residential facility designated for youthful offenders.<sup>27</sup>

Institutions specially designated to house youthful offenders are:

- Sumter Correctional Institution.
- Sumter Basic Training Unit.
- Suwannee Correctional Institution.
- Lowell Correctional Institution and Basic Training Unit.
- Lake City Correctional Facility.<sup>28</sup>

### Youthful Offender Basic Training

DOC must maintain a youthful offender basic training program, which includes marching drills, calisthenics, a rigid dress code, manual labor assignments, physical training with obstacle courses, training in decisionmaking and personal development, high school equivalency diploma and adult basic education courses, and drug and other rehabilitation programs.<sup>29</sup> The department screens youthful offenders for eligibility for the basic training program; an eligible youthful offender may be court-sentenced or DOC-designated and has:

- No physical limitation precluding participation in strenuous activity;
- No impairment; and
- Never previously been incarcerated in a state or federal correctional facility.<sup>30</sup>

DOC must obtain approval from the sentencing court for a youthful offender to participate in the basic training program.<sup>31</sup> If the person was classified as a youthful offender by DOC rather than sentenced as such by the court, DOC must also notify the state attorney, who may object in writing.<sup>32</sup>

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<sup>25</sup> S. 958.11(7), F.S.

<sup>26</sup> S. 958.11(1), F.S.

<sup>27</sup> S. 958.11(3), F.S.

<sup>28</sup> Rule 33-601.223, F.A.C.

<sup>29</sup> S. 958.045(1), F.S.

<sup>30</sup> S. 958.045(2), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

A participant in the youthful offender basic training program must serve a minimum of 120 days in the program.<sup>33</sup> Upon a youthful offender's successful completion of the basic training program, the court must modify the sentence and place the youthful offender on probation.<sup>34</sup>

### **Effect of Proposed Changes**

HB 887 authorizes a court to sentence a person meeting all other criteria as a youthful offender if he or she was 21 or younger at the time the offense was committed. The bill puts no limits on when a person must be sentenced as a youthful offender, if he or she committed the crime while 21 years old or younger.

The bill provides an effective date of July 1, 2019.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 958.04, F.S., relating to judicial disposition of youthful offenders.

**Section 2:** Reenacts s. 958.03, F.S., relating to definitions.

**Section 3:** Reenacts s. 958.045, F.S., relating to youthful offender basic training program.

**Section 4:** Reenacts s. 958.565, F.S., relating to sentencing powers; procedures, alternatives for juveniles prosecuted as adults.

**Section 5:** Provides an effective date of July 1, 2019.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill may have a negative impact on the number of prison beds by expanding the class of people eligible for decreased sanctions as a youthful offender.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate impact on the number of jail beds by expanding the class of people eligible for decreased sanctions as a youthful offender. Jails may require more beds to house people who would have otherwise received a prison sentence but for youthful offender classification. Such individuals may receive a jail sentence or probation, subject to incarceration in the jail upon violating probation.

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

None.

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<sup>33</sup> S. 958.045(1), F.S.

<sup>34</sup> S. 958.04(2)(c), F.S.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**