



The Florida Senate

Interim Project Report 2002-129

October 2001

Committee on Criminal Justice

Senator Victor D. Crist, Chairman

SENTENCING ALTERNATIVES FOR JUVENILES INDICTED FOR MURDER

SUMMARY

The issue of sentencing alternatives for juveniles convicted of murder came to the attention of this committee as a result of some high profile cases involving young juveniles under the age of 16 years who were indicted for and ultimately convicted of murder. The report reviews Florida's present statutory scheme for sentencing these juveniles; looks at other types of "blended" sentencing options from various states; and assimilates information from state attorneys, circuit court judges, and public defenders about their current charging and sentencing practices and their opinions on the adequacy of current sentencing options for these juveniles.

Questionnaires were distributed to the state attorneys, public defenders, and chief circuit court judges in each judicial circuit. Out of 60 possible responses, 37 questionnaires were received (ten judges, ten public defenders, and 17 state attorneys) for a response rate of 62 percent. Out of ten responding judges, seven felt the current sentencing scheme is adequate and does not need to be changed, two felt it is inadequate because the only choices involve lengthy prison terms, and one judge deferred to the Legislature regarding this policy question.

Out of 17 responding state attorneys, eight felt Florida's current sentencing scheme is adequate given the severity of the crime and eight felt that it is inadequate because adult mandatory prison sentences may be too harsh while juvenile sanctions are too lenient. One state attorney reserved his opinion in light of the newly enacted law requiring youthful offender placement for young serious juvenile offenders prosecuted as adults because it may address sentencing concerns.

Out of ten responding public defenders, two felt the current sentencing structure is adequate, and eight felt that it is inadequate. One public defender thought that

juveniles should not be treated as adults because they have different needs.

Responses from state attorneys and judges described current charging and sentencing practices, most notably that it is more likely than not that these juveniles will be charged, prosecuted, and sentenced as adults rather than as juveniles, unless the juvenile is especially young.

If lawmakers feel there is a need to make a change to the sentencing policy in cases involving juveniles who are convicted of murder, respondents made numerous suggestions, including the following:

- Re-implement parole after serving 25 years (one respondent suggested 15 years) of a life sentence for juveniles who were younger than 16 years of age when they committed murder;
- Allow the juvenile to be committed to a Level 10 program for a determinate time period followed by adult prison in a youthful offender facility;
- Allow the court to set an adult term of years appropriate for the offender's age and crime, short of life imprisonment when it involves young offenders, and allow the juvenile to serve part of that sentence in the juvenile system and the rest of it in the DOC;
- Allow judges to retain jurisdiction to impose appropriate sanctions until the juvenile is 25 years old and when the juvenile is sentenced in adult court, the judge should have an option of imposing juvenile sanctions until the juvenile is 25 years old, to be followed by a long adult probation;
- Provide a 10-year minimum mandatory sentence in first-degree murder cases, giving the judge discretion to impose a longer sentence and provide a 5-year minimum mandatory sentence with possibility of a longer sentence at the judge's discretion for lesser degrees of murder;
- Expand the maximum sentences for youthful offenders convicted of murder;

- Allow the court to impose a “blended sentence,” that is, commitment to a juvenile program followed by extended adult probation; and
- Create a 40-year sentence and a 10-year and up to 40-year sentence as options for the judge to consider when sentencing juveniles under 18 years of age for first-degree murder.

If, on the other hand, lawmakers feel that such a policy change is not necessary because the current sentencing scheme is appropriate and adequate charging and prosecutorial discretion exists to handle these cases sufficiently, then lawmakers need not make any changes now. In the meantime, lawmakers will have the opportunity in April 2002 to assess, what, if any, impact the recently enacted law requiring youthful offender placement has had upon the current sentencing of young juveniles convicted of murder and whether the new law has lessened any of the controversy surrounding the sanctioning of these juveniles.

BACKGROUND

During the 2001 Legislative Session, the issue of sentencing alternatives for juveniles convicted of murder came to the attention of this committee based upon several high profile cases involving young juveniles under the age of 16 years who were indicted for and ultimately convicted of murder. Questions were raised in the media about the lack of sentencing options for these juveniles. This report describes various sentencing options, including the current sentencing scheme in Florida and in other jurisdictions. It will hopefully provide critical and definitive information to legislators who may be making sensitive policy decisions in this high-profile area.

METHODOLOGY

Staff examined Florida’s present statutory scheme for sentencing juveniles, particularly ones 16 years of age or younger, charged with and ultimately convicted of murder. In addition, current practices for charging and sentencing these juveniles were reviewed. Staff also looked at three types of “blended” sentencing alternatives in several other jurisdictions. Finally, a questionnaire was sent to state attorneys, circuit court judges, and public defenders requesting information on the adequacy of current sentencing options as well as on their current charging and sentencing practices for these juveniles. (The questionnaire responses are on file with the Senate Criminal Justice Committee in Room 510 Knott Building, Tallahassee, Florida.)

FINDINGS

Current Law

First-degree murder is a capital offense, punishable by death or life imprisonment without the possibility of parole. s. 782.04(1), F.S. Juveniles convicted of first-degree murder who are 16 years of age or younger can not be put to death. See *Brennan v. State*, 754 So.2d 1 (Fla. 1999); thus, life imprisonment without parole is the applicable penalty for these juveniles, if they are charged and prosecuted as adults in criminal court. If, on the other hand, they are charged and handled as juveniles in juvenile court, sanctions can range from probation (although in practice, this is highly unlikely given the seriousness of the offense) to commitment in a maximum risk juvenile prison followed by some type of supervision within the Department of Juvenile Justice (DJJ). s. 985.231, F.S.

According to questionnaire responses, it is more likely that these juveniles will be charged and prosecuted as adults rather than as juveniles, unless the juvenile is especially young. Responses from state attorneys indicate that realistically, juvenile sentencing options are limited in these cases because the maximum length of time a juvenile can serve in a juvenile prison is 36 months and a juvenile can not be committed to a juvenile program for a determinate time period by the court, which they feel is a disadvantage. (The average length of stay in a juvenile prison is currently 19 months, according to the DJJ.)

Second-degree murder under s. 782.04(2)(3), F.S., is a first-degree felony, punishable by a term of years not exceeding life imprisonment. The lowest permissible sentence under the Criminal Punishment Code that can be imposed upon juveniles convicted and sentenced for this offense as adults, assuming no prior record or additional offenses, would be around twenty years. The sentencing range would be from the lowest permissible sentence up to, and including, life imprisonment. s. 921.0024, F.S. If, on the other hand, these juveniles are charged and handled as juveniles in juvenile court, the same range of sanctions as the ones discussed in the context of first-degree murder are available.

A juvenile convicted and sentenced as an adult for third-degree murder, a second degree felony, can be punished by imprisonment up to the statutory maximum of 15 years. s. 782.04(4), F.S. Under the Criminal Punishment Code, the lowest permissible sentence would be around 10 years. If, however, the juvenile is handled as a juvenile in juvenile court, the

same range of penalties as previously mentioned above would apply. (According to questionnaire responses, third-degree murder is not regularly charged.)

If a state attorney decides to charge a juvenile who discharges a firearm that results in death or great bodily harm under s. 775.087, F.S., the “10-20-life” law, and the court determines the juvenile qualifies and the juvenile is convicted of murder, there is a minimum mandatory 25-year sentence that would apply. (Section 985.277, F.S., prescribes the mechanism for transferring a qualifying juvenile into the adult court to be prosecuted under the 10-20-life law.)

If a state attorney intends to charge a juvenile as an adult with first-degree murder, the case must be presented to the grand jury for possible indictment pursuant to s. 985.225, F.S., and Art.1, s.15 of the Florida Constitution. An indictment must also be sought if the state attorney intends to charge an offense punishable by life imprisonment (second-degree murder, for example) if the juvenile is under 14 years of age. s. 985.225, F.S., s. 985.226, F.S., and s. 985.227, F.S.

An indictment is not required under ch. 985, F.S., to charge a juvenile with an offense that will be tried in juvenile court. Similarly, an indictment is not required to charge a juvenile 14 years of age or older as an adult with second or third-degree murder. In this instance, the state attorney may direct file an information under s. 985.227, F.S.

Section 985.225, F.S., requires that a juvenile of any age who is indicted with an offense punishable by death or life imprisonment be tried and handled as an adult, including being sentenced as an adult. If the juvenile is found not guilty on the indicted offense, but found guilty of a lesser included or any other indicted offense as a part of the criminal episode, the court may sentence the juvenile under s. 985.233, F.S., which allows the imposition of juvenile and youthful offender sanctions under certain circumstances.

As a practical matter, however, these alternative sanctions are not available to a juvenile convicted of capital murder or other offenses punishable by life imprisonment (second-degree murder, for instance). See s. 985.233, F.S., and *Ritchie v. State*, 670 So.2d 924 (Fla. 1996). A juvenile convicted of third-degree murder, on the other hand, would be eligible for these sentencing alternatives under this section.

To be eligible for youthful offender classification within the Department of Corrections (DOC) under ch. 958, F.S., a juvenile must: be at least 18 years of age or if under 18 years of age, must have been transferred for prosecution as an adult; have committed the offense prior to becoming 21 years of age; have no previous classifications as a youthful offender, *nor have been found guilty of a capital or life felony*; and not exceed 24 years of age, nor have a sentence longer than 10 years. s. 958.04, F.S., and s. 958.11, F.S.

Based on the above criteria, a juvenile convicted of first or second-degree murder is ineligible for youthful offender classification. However, the Legislature recently passed CS/SB 322 (ch. 2001-210, Laws of Florida) which requires young juveniles prosecuted as adults (less than 18 years of age who were also 15 years of age or younger at the time of the crime with no prior adjudications) who have been convicted of offenses that would otherwise preclude them from being put in a youthful offender facility (first or second-degree murder) to be placed in one until the juvenile reaches 21 years of age. According to the DOC, there are currently 14 young offenders meeting the eligibility criteria that have been placed in the select young adult offender unit at Marion Correctional Institution.

The legislation also requires the DOC to assign to specific correctional facilities all inmates who are less than 18 years of age who are not eligible for youthful offender placement. These younger inmates must be housed separately from inmates who are 18 years of age or older, including separate food services, education, and recreational activities. (The DOC has the discretion to reassign to the general inmate population a young inmate who is disruptive and threatening.)

This new law provides a mechanism for ensuring that young juveniles convicted of murder and sentenced to the DOC (like Lionel Tate and Nathaniel Brazill) have the opportunity to be segregated from the older inmate population. The DOC must report to the Legislature on its compliance with this requirement by April 2002.

Furthermore, juveniles sentenced to the DOC who are less than 18 years of age can be administratively transferred from the DOC to the DJJ upon consent of both agency secretaries. Such juveniles can stay in the DJJ for the remainder of their sentence or until they turn 21 years of age, whichever results in a shorter sentence. If they turn 21 years of age before completing their sentence, they are transferred back to

the DOC to complete it. s. 985.417, F.S. (The DJJ secretary is also authorized under this section to recommend to the Governor that clemency be extended to a juvenile, if there is one so deserving.)

According to the DJJ, two juveniles who were prosecuted as adults and convicted of murder are currently in the juvenile system because they were administratively transferred from the DOC. (One of them is Lionel Tate, who is serving a life sentence for first-degree murder.) The Secretary of DJJ has also received and is reviewing an administrative transfer request from the DOC for Nathaniel Brazill, who was recently sentenced to 28 years incarceration after being convicted of second-degree murder.

Over the last five years, according to the DJJ, 21 juveniles under 18 years of age who were charged with committing murder or manslaughter have been committed to the DJJ. The DJJ also estimates another 100 juveniles have been transferred to adult court and sentenced back to the DJJ for committing murder or manslaughter during that same five year period.

According to the DOC, over the last five years, there have been 138 juveniles, ages 12 through 17 years old, who were prosecuted and sentenced as adults for first-degree murder. The average sentence length for this group is 39 years. There have also been 168 sentenced for second-degree murder, with this group receiving an average sentence length of 22 years. During this same time period, there have been 23 who were sentenced for third-degree murder, receiving an average sentence length of 12 years.

Other Jurisdictions

Some states have a dispositional/sentencing scheme that allows a judge to “blend” criminal court sentences with juvenile court dispositions, rather than providing for the imposition of either a criminal court sentence or a juvenile court disposition as happens in Florida. There are different types of blended/dispositional sentencing schemes, including one that allows the juvenile court to impose both juvenile and adult correctional sanctions.

Under this type of blended dispositional/sentencing scheme, the juvenile court has original jurisdiction and the responsibility for adjudicating the juvenile. Typically, the adult sanction is suspended unless the juvenile commits a violation, and if this occurs, the adult sanction is imposed. States such as Connecticut, Kansas, Minnesota, and Montana use this type of

sentencing scheme, according to the *Juvenile Offenders and Victims: 1999 National Report*, page 108.

Other states, such as Arkansas, Iowa, Missouri, and Virginia, allow the criminal court, rather than the juvenile court, to try the case and to impose both juvenile and adult correctional sanctions. As a general rule, in this type of blended dispositional/sentencing scheme, the adult sentence is suspended unless the juvenile commits a violation, in which case the adult sanction is invoked. *Id.*

Another blended dispositional/sentencing option includes allowing the juvenile court to impose a lengthy juvenile sanction that remains in effect beyond the time that the court has general jurisdiction over the juvenile. A later determination is then made by the court as to whether the remaining juvenile sanction should be completed in the adult correctional system. States such as Texas, South Carolina, Rhode Island, Massachusetts, and Colorado employ a sentencing scheme similar to this one. *Id.*

Questionnaire Responses

Questionnaires were distributed to the state attorneys, public defenders, and chief circuit court judges in each judicial circuit. Out of 60 possible responses, 37 questionnaires were received for a response rate of 62 percent. What follows is a summary of responses by each group of respondents (10 judges, 10 public defenders, and 17 state attorneys) concerning the adequacy of current sentencing options for young juveniles sentenced to murder under Florida law, any suggestions for change, and current charging and sentencing practices by state attorneys and judges.

Judges:

Current Sentencing Options:

Adequate — 7 judges (one judge indicated there is nothing wrong with the system so it does not need to be fixed.)

Inadequate — 2 judges (the sentencing code does not allow much discretion in sentencing juveniles convicted of murder because the only choices are life or lengthy prison terms.)

Defers — to Legislature concerning policy decisions—1 judge

Suggestions for Change:

1. Allow the court to order a specialized incarceration in a high or maximum risk juvenile program (emphasizing education and job skills) until the juvenile is 21 years old, followed by a lengthy period of controlled release from prison. (If the juvenile does not show achievement while in the juvenile program in the areas of personal conduct, academics, and job skills, send him to prison.)
2. Re-implement the possibility of parole for a juvenile sentenced to life who was 16 years of age or younger when the murder was committed, after he has completed 25 years of that sentence.
3. Allow the juvenile to be committed to a Level 10 program for a determinate time period followed by adult prison in a youthful offender facility.

Current judicial sentencing practices:

- Juveniles convicted of murder under s. 782.04, F.S., are sentenced as adults utilizing the applicable sentencing laws (mandatory sentences).
- These murder cases are analyzed on a case-by-case basis, but most likely adult sanctions are imposed.
- Sentence as an adult and recommend the DOC confine the juvenile in an appropriate facility, for example, a youthful offender facility.
- Disposition depends on the facts of each case and the age of the juvenile. If the case is presented to a grand jury and an indictment is returned, the case is dismissed and the juvenile is tried and treated in every respect as an adult. If the prosecutor does not present the case to the grand jury, and the court finds that the juvenile committed the murder, the juvenile is sentenced as an adult. If the court finds the juvenile committed a lesser-included offense, the court considers all the evidence, including expert testimony, victim impact testimony and testimony from the juvenile's family. Then the court imposes juvenile sanctions under s. 985.233, F.S.

State Attorneys:***Current Sentencing Options:***

Adequate —8 state attorneys

Inadequate —8 state attorneys (the minimum mandatory adult sentences may be too harsh and the juvenile sanctions are too lenient.)

- A juvenile committing first or second-degree murder is a great risk to the community and fairness to the victim and the need for deterrence demands that the juvenile serve a long period of time away from the community and although an adult sentence may accomplish these goals, it does not allow the juvenile to receive appropriate treatment.
- Adult sentencing options are inadequate because incarceration without appropriate treatment/rehabilitation is the only option and sentence length for first-degree murder is life imprisonment and a sentence under the 10-20-life law is a mandatory sentence of 25 years to life.
- On the other hand, the actual length of time a juvenile serves in the juvenile system is very inadequate to satisfy public safety needs, deterrence, or fairness issues.

Unsure —1 state attorney (reserves opinion in light of the newly enacted law requiring youthful offender placement for young serious juvenile offenders prosecuted as adults because it may address concerns about sentencing.)

Suggestions for Change:

1. For young offenders convicted of murder, allow the court to set an adult term of years appropriate for the offender's age and crime, and do not require the judge to follow a minimum mandatory sentence; instead, allow him to set a definite term of years short of life imprisonment (7 state attorneys).
 - Three of these state attorneys recommended allowing the juvenile to serve the first part of that sentence in the juvenile system (one said until 18 years of age, another said until 21 years of age) and then serve the rest of it in the DOC.
2. When a juvenile is sentenced for murder in juvenile court, the judge should retain jurisdiction to impose appropriate sanctions until the juvenile is 25 years old, and when the juvenile is sentenced in adult court, the judge should have an option of

imposing juvenile sanctions until the juvenile is 25 years old to be followed by a long adult probation.

3. Create a special exception for sentencing juveniles younger than 16 years of age who are convicted of murder in adult court. Provide a 10-year minimum mandatory sentence in first-degree murder cases, giving the judge discretion to impose a longer sentence. Provide a 5-year minimum mandatory sentence with possibility of a longer sentence at the judge's discretion for lesser degrees of murder (second and third-degree) and the other crimes currently falling under the 10-20-life law.
4. In addition to appropriate sanctions, provide programs for these juveniles ensuring treatment, education, job training, recreation and complete community safety.
5. House these young juveniles who are tried as adults in a juvenile detention center until they turn 15 years old or until they are actually tried and convicted.

Current charging and prosecuting practices:

- Under Florida law, state attorneys have adequate discretion to fairly charge and prosecute a juvenile, particularly a young one, for as serious an offense as murder (16 state attorneys agreed, the other one was unsure).
- Filing a murder charge is determined by the facts and circumstances of each individual case, including the juvenile's delinquency record, his current status with the DJJ, the juvenile's age, mental capacity, background, the juvenile's role in the murder, victim impact, appropriateness of juvenile sanctions, protection of the community, and the evidence and circumstances surrounding the murder (7 state attorneys).
- These murder cases are either indicted or direct filed to the adult system (first-degree murder would presumptively be handled in adult court) (4 state attorneys).
- A juvenile 12 years of age or older who commits first or second-degree murder is direct filed or indicted and tried as an adult, and if he is under 12 years of age, the prosecutor reviews on a case by case basis to determine whether to charge the juvenile as an adult or juvenile; a juvenile 16 years of age or older is generally charged as an adult for

third-degree murder, and if he is younger than 16 years of age, a case by case determination is made (1 state attorney).

- These murder cases are handled pursuant to their respective direct file policy (2 state attorneys).
- The grand jury determines whether these cases are handled in the adult or juvenile system (2 state attorneys).
- These cases are reviewed for application of the 10-20-life law and then the prosecutor considers the merits for presentation to the grand jury (1 state attorney).

Public Defenders:

Current Sentencing Options:

Adequate —2 public defenders

Inadequate —8 public defenders (juveniles should not be treated as adults because they have different needs; they should have separate housing, and there should be specific laws involving juvenile sentencing, where they should be held, mental health issues and their treatment.)

- Unless the Legislature mandates whatever sentencing options it finds appropriate, most judges will not consider any other discretionary sentencing alternatives because most find a sentence of life-in-prison appropriate for a crime as serious as murder.

Suggestions for Change:

1. Give the court discretion to sentence juveniles as youthful offenders or to deviate from mandatory sentencing under the 10-20-life law or first-degree murder.
2. Allow the court to impose a life sentence with the eligibility for parole after 15 years.
3. Expand the maximum sentences for youthful offenders convicted of murder.
4. If a juvenile is under 18 years of age at the time of the murder, put him in a unique sentencing category whereby the court has some discretion, or at a minimum, provide a minimum mandatory 25-year sentencing option.

5. Prohibit a minimum mandatory sentence for juveniles convicted of murder; life without parole should not apply, nor should the 10-20-life law. The court should have discretion to sentence these juveniles, ranging from juvenile sanctions to life in prison.
6. Allow the court to impose a “blended sentence,” that is, commitment to a juvenile program followed by extended adult probation.
7. Provide the court with multiple sentencing options for juveniles less than 18 years of age convicted of first-degree murder as follows:
 - Abolish the death penalty for anyone under 18 years of age,
 - Retain life imprisonment without parole,
 - Create a 40-year sentence (subject to 85% rule)
 - Create a 10-year and up to 40-year sentence (subject to 85% rule), and
 - Require a sentencing hearing whereby the judge determines which sentencing option to impose.

RECOMMENDATIONS

If lawmakers feel there is a need to make a change to the sentencing policy in cases involving juveniles who are convicted of murder, this report contains many suggestions and ideas from state attorneys, judges, public defenders, and from other states for possible changes to the current sentencing scheme in Florida. If, on the other hand, lawmakers feel that such a policy change is not necessary because the current sentencing scheme is appropriate and adequate charging and prosecutorial discretion exists to handle these cases sufficiently, then lawmakers need not make any changes now. In the meantime, lawmakers will have the opportunity in April 2002 to assess, what, if any, impact the recently enacted law requiring youthful offender placement has had upon the current sentencing of young juveniles convicted of murder and whether the new law has lessened any of the controversy surrounding the sanctioning of these juveniles.