

STORAGE NAME: h0617.jj.doc
DATE: March 15, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUVENILE JUSTICE
ANALYSIS**

BILL #: HB 617
RELATING TO: Sentencing of Juveniles
SPONSOR(S): Representative Harper

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUVENILE JUSTICE
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

HB 617 amends s. 985.233, F.S., which relates to the court's sentencing powers in cases involving the prosecution of juveniles as adults. Subsection (4) of s. 985.233, F.S., provides alternatives for the court when sentencing a juvenile who has been prosecuted as an adult. The bill expands the court's alternatives for sentencing such juveniles by authorizing the imposition of a combination of juvenile and adult sanctions. Under current law, such sanctions are expressly prohibited.

Under the bill, if the court sentences an offender to a combination of adult and juvenile sanctions, the juvenile must be placed in an adult community control program with the special condition that the juvenile complete a juvenile residential commitment program. If the juvenile violates any provision of the juvenile commitment program, the bill would allow the court to sanction the offender as though the juvenile had violated a condition of adult community control.

The bill appears to have a fiscal impact on both the Department of Juvenile Justice (DJJ) and the Department of Corrections (DC). In association with this bill, DJJ estimates the expenditure impact will be \$16,139,800 in non-recurring costs and \$4,609,550 in recurring costs during Fiscal Year (FY) 2001-2002. Subsequent recurring expenditures for DJJ are estimated at \$7,004,350. The Criminal Justice Estimating Conference has not examined this bill in order to determine the potential impact of this bill on DC prison beds. However, DC estimates this bill will increase the agency's community supervision population, potentially resulting in the agency's need for an additional 40 positions at an approximate annual cost of \$1,680,000.

The bill provides an effective date of July 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Presently, Florida law allows for the prosecution of children as adults in certain circumstances. See ss. 985.225 (relating to indictment of a juvenile), 985.226 (relating to waiver of juvenile court jurisdiction), and 985.227 (relating to the direct filing of juveniles), F.S. Section 985.233(4)(a)2, F.S., describes the court's sentencing options in cases involving juveniles who have been prosecuted as adults through methods other than indictment. The section provides the court with three disposition alternatives for such offenders. Under current law, the court may either impose an adult sanction, an adult sanction under the youthful offender provisions of chapter 958, or a juvenile sanction. However, subsection (4)(b) of s. 985.233, F.S., expressly prohibits the court from imposing a combination of adult and juvenile sanctions.¹

If the court opts to impose adult sanctions, the court may impose any sanction on the juvenile that would be legally permissible for an adult offender. Adult sanctions may range from a life sentence to community-based supervision under the Department of Corrections (DC).²

Alternatively, the court may impose adult sanctions and dispose of the case under chapter 958, F.S., which relates to youthful offenders. Youthful offender sanctions are statutorily reserved for certain adult offenders who were under the age of 21 at the time of the offense and certain juvenile offenders who have been transferred for adult prosecution. Pursuant to s. 958.04(2)(a), F.S., when the court sentences a defendant as a youthful offender, the offender must be placed under supervision in a probation or community control program for a period of not more than 6 years. Subsection (b) of s. 958.04 (2), F.S., allows the court to impose a period of incarceration as a condition of probation or community control, however such incarceration may not exceed 364 days. Subsection (c) of s. 958.04(2). F.S., allows the court to impose a split sentence whereby the youthful offender is to be placed on probation or community control upon completion of any specified period of incarceration; however, such incarceration period must be for not less than 1 year or more than 4 years. Under this option, the period of probation or community control commences immediately upon the release of the youthful offender from incarceration. Subsection (d) of s. 958.04(2). F.S., allows the court to commit the youthful offender to the custody of the department for a period of not more than 6 years. Under this subsection, the department may recommend that the youthful offender's sentence be modified or terminated early based upon "successful participation" by the offender. See s. 958.04(2)(d).

¹ Combination sentences, involving both juvenile and adult sanctions, were expressly prohibited by the Florida Legislature in 1997. See s.41, Ch. 97-238, L.O.F.

² Although a death sentence is an adult sentencing option in cases involving offenders over the age of 18, case law prohibits the imposition of a sentence of death upon juvenile offenders in Florida. See, e.g., Brennan v. State, 754 So. 2d 1 (Fla. 1999).

If the court opts to impose juvenile sanctions pursuant to s. 985.233(4)(a)2, F.S., the court must stay adjudication of guilt and adjudicate the child delinquent. Adjudication of delinquency is not a conviction. Upon adjudicating a child delinquent, the court may commit the child to the Department of Juvenile Justice (DJJ) for placement in a juvenile community control program or in an appropriate residential commitment program.

In any circumstance where the court sentences a juvenile to DC, s. 985.417, F.S., provides that the Secretary of Juvenile Justice may administratively transfer the juvenile to DJJ for the remainder of the sentence, or until his or her 21st birthday, whichever results in the shorter term. When the offender attains his or her 21st birthday, if the imposed sentence has not terminated, the offender is transferred back to the DC youthful offender program.

C. EFFECT OF PROPOSED CHANGES:

The bill expands the court's options when sentencing a juvenile offender who has been transferred for adult prosecution pursuant to the direct filing of a criminal information or through the waiver of juvenile court jurisdiction. Under current law, the court may either impose an adult sanction, an adult sanction under the youthful offender provisions of chapter 958, or a juvenile sanction. Under the bill, language in s. 985.233(4)(b), F.S., is stricken in order to provide the court with an additional sentencing alternative of imposing a combination of juvenile and adult sanctions pursuant to s. 985.233(4)(a), F.S. If the court opts to impose a combination of juvenile and adult sanctions, the bill requires that the juvenile be placed in an adult community control program. Under the bill, a special condition of such community control must be the completion of a juvenile residential commitment program. The juvenile is subject to adult sanctions in the event that the offender violates a provision of the juvenile commitment program.

D. SECTION-BY-SECTION ANALYSIS:

Please refer to the "Present Situation" and "Effect of Proposed Changes" sections above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DJJ estimates that the bill will require the expenditure of \$16,139,000 in non-recurring funds during FY 2001-2002. Recurring expenditures were estimated by DJJ to be \$4,609,550 during the first year the bill is in effect and \$7,004,350 thereafter.

The Criminal Justice Estimating Conference has not examined this bill in order to determine the potential impact of this bill on DC prison beds. However, DC estimates this bill will increase the agency's community supervision population, potentially resulting in the agency's need for an additional 40 positions at an annual cost of approximately \$1,680,000.

Please refer to the "Fiscal Comments" section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill affects juveniles who are prosecuted as adults. Under current law, such juveniles may ultimately receive an adult sanction or a juvenile sanction, but not both. The bill provides authorization for the court to impose a combination of adult and juvenile sanctions.

The Criminal Justice Estimating Conference has not examined this bill in order to determine the potential impact of this bill on DC prison beds. Any impact on DC is probably attributable to the number of youth who receive straight juvenile sanctions under current law, but who may receive a combination sentence pursuant to the bill. DC estimates this bill will increase the agency's community supervision population. Community control supervision is a more intensive form of supervision than probation. Community control offenders are generally restricted to their residences, unless they have been approved to be away from the home for limited purposes such as school or work. DC's ideal ratio for a community control caseload is 25 offenders per officer. DC has indicated a belief that the courts would make frequent use of the combination sentencing option provided under this bill due to the benefits of providing increased public safety offered by adult supervision under DC in combination with the positive impact of a juvenile commitment program on the offender.

During FY 1999-2000, there were 2,391 juvenile offenders sentenced as adults and placed on adult supervision by DC. Of the 2,391, there were 670 juvenile offenders placed on community control supervision. DC estimates that the remaining 1,721 are the cohort likely to receive a combination sentence. DC estimates that if all 1,721 were placed on community control, the agency would need an additional 40 positions to adequately supervise the offenders under a 25:1 case load ratio. DC estimates that this would result in an annual cost of approximately \$1,680,000 and would probably account for the majority of the fiscal impact on the Department of Corrections.

DJJ will likely bear the majority of fiscal consequences associated with the bill. DJJ estimates that approximately 12 percent of all youth who are transferred for adult prosecution are sentenced back to DJJ each year. In FY 1999-2000, 396 offenders who were transferred to the adult system were sentenced back to DJJ. Under the bill, DJJ anticipates that there would be some cost-savings to the agency due to the fact that DC, not DJJ, would supervise such offenders upon release from the juvenile commitment program. DJJ estimates that the savings could be as high as \$2,494,800. The total represents 396 offenders sentenced back to DJJ at a \$35 per diem for juvenile conditional release supervision for an average of 180 days of supervision per offender.

According to agency information, 1,683 of the 2,391 juvenile offenders who received an adult community-based sentence were placed under the supervision of DC for three years or less. DJJ anticipates that this cohort (1,683) is most likely to be affected by the combination sentencing option provided in this bill. DJJ further predicts that this same cohort of offenders would probably receive a combination sentence as often as juvenile offenders prosecuted as adults are sentenced back for juvenile sanctions under current law. Thus, DJJ predicts that a minimum of 12 percent of the 1,683 offenders are likely to receive a combination sentence under the bill, resulting in 202 offenders

committed for residential placement with DJJ. DJJ estimates that such offenders would likely be placed in a high-risk residential facility, having a \$95 per diem and an average length of stay of approximately one year. The recurring operational expenses would be approximately \$7 million. In order to accommodate an additional 202 offenders in the juvenile system, DJJ estimates that it would incur nonrecurring costs of \$16,139,800 (202 new beds at a construction cost of \$79,900 each).

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of municipalities or counties to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Staff Director:

Lori Ager

Lori Ager