

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 Youthful Offenders
SPONSOR(S): Porth and others
TIED BILLS: IDEN./SIM. BILLS: SB 646

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Juvenile Justice Committee, White, White. Row 2: 2) Criminal Justice Committee. Row 3: 3) Justice Appropriations Committee. Row 4: 4) Justice Council. Row 5: 5)

SUMMARY ANALYSIS

The bill amends s. 958.045, F.S., to provide that the Department of Corrections (DOC), upon receipt of a youthful offender, must: (1) screen the youthful offender for potential participation in a Department of Juvenile Justice (DJJ) boot camp provided for in s. 985.309, F.S.; and (2) notify the state attorney when it requests court approval for placement of a youthful offender in a DJJ boot camp.

The bill also removes a 364-day jail sentence limitation that has been interpreted by Florida courts to be required by s. 985.045(5)(c), F.S., for youthful offenders who violate their probation after completing the DOC's basic training program. This limitation results in trial courts not being able to impose sentences, such as imprisonment, which it could have originally imposed in the case for the youthful offender. Most recently in March 2004, the Third District Court of Appeals suggested that the Legislature review this issue, as the court believed that trial court judges, due to the sentencing limitation, may hesitate to recommend the basic training program to rehabilitate a youthful offender.

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this bill on the DOC.

The bill takes effect on July 1, 2005.

The bill's sponsor has filed a strike-everything amendment to this bill. See "Drafting Issues or Other Comments," infra.

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 a juvenile 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: Chapter 958, F.S., contains Florida's Youthful Offender Act, the purpose of which is to provide a sentencing alternative¹ that will improve the chances for correction and successful return to the community for 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 21st birthday; and (3) has not been previously sentenced as a youthful offender by a court.²

If the court elects to adjudicate and sentence a defendant as a youthful offender, it 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.³ These sentencing options are the exclusive sanctions that may be imposed for a court-adjudicated youthful offender,⁴ and, in general, the total sentence (probation or community control and incarceration) length may be no longer than six years.⁵

In cases where the court has elected adult, rather than youthful offender, adjudication and sentencing, the DOC is statutorily permitted to 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.⁶ Unlike court youthful offender adjudication, which results in 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.⁷ Such DOC classification does not affect the original sentence imposed by the court.⁸

Separate institutions and programs must be designated by the DOC for youthful offenders, and, subject to specified exceptions, youthful offenders who are between 14 and 18 years of age must be housed separately from youthful offenders who are 19 years of age or older.⁹ Youthful offender programming requires participation in work assignments and in career, academic, counseling, and other rehabilitative programs.¹⁰

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

² Sections 958.021 and 958.04(1), F.S.

³ Section 958.04(2), F.S.

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

⁵ Section 958.04(2), F.S.

⁶ Sections 958.03(5) and 958.11(4), F.S.; *Thomas v. State*, 825 So.2d 1032 (Fla. 1st DCA 2002).

⁷ *Lezcano v. State*, 586 So.2d 1287 (3rd DCA 1991).

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

⁹ Section 958.11, F.S..

¹⁰ Section 958.12, F.S.

The DOC must also offer a basic training program, commonly referred to as “boot camp,”¹¹ for certain youthful offenders, 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.¹² The DOC is required to screen all youthful offenders for its basic training program. To be eligible, an offender must: (1) have no physical limitations that preclude strenuous activity; (2) not be impaired; and (3) not have been previously incarcerated in a federal or state correctional facility. Further, the DOC must consider the offender’s criminal history and potential rehabilitative benefits of “shock” incarceration. If the statutory criteria are satisfied and space is available, the DOC must submit a written request for the sentencing court’s approval of placement of the youthful offender in the basic training program and must, at the same time, notify the state attorney of the request. The state attorney may submit written objections within 14 days after the notice is mailed. The sentencing court must advise the DOC of its decision regarding the placement within 21 days after receipt of the notice. Failure of the court to do so within 21 days constitutes approval of the placement.¹³

Upon completion of the DOC’s basic training program, the DOC must submit a report to the court and to the releasing authority that describes the youthful offender’s performance. If the performance has been satisfactory: (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.¹⁴

If probation is subsequently violated, 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). Florida courts have held that a trial court may impose no more than 364 days incarceration for such a violation of probation because s. 958.04(2)(b), F.S., provides that one of the youthful offender sentencing options originally available to a trial court is, “. . . a period of incarceration **as a condition of probation** . . .,” which may not exceed 364 days.¹⁵ (emphasis added). The Fourth District Court of Appeals has explained that, “Read together, these two statutes have been consistently construed as limiting to 364 days the period of incarceration which may be imposed following successful completion of a boot camp.”¹⁶ Most recently 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.¹⁷

Juvenile Offenders: Boot camps for youth prosecuted as juveniles under ch. 985, F.S., may be operated, subject to specific appropriation or local funding, by the Department of Juvenile Justice (DJJ) or a county or municipal government. Such juveniles may be placed in these boot camps by the DJJ if they are between 14 and 17 years of age at the time of adjudication and have been committed to the DJJ for any offense that would be a felony if committed by an adult, other than a capital, life, or first degree violent felony. A boot camp must include educational and work assignments and physical

¹¹ *Lee v. State*, 884 So.2d 460 (Fla. 4th DCA 2004).

¹² Section 958.045, F.S.

¹³ Section 958.045(2), F.S.

¹⁴ Section 958.045(5)(c) and (8)(d), F.S.

¹⁵ *Bloodworth v. State*, 769 So.2d 1117 (Fla. 2nd DCA 2000); *Burkett v. State*, 816 So.2d 767 (Fla. 1st DCA 2002).

¹⁶ *Lee v. State*, 884 So.2d 460, 461 (Fla. 4th DCA 2004).

¹⁷ *Blaxton v. State*, 868 So.2d 620, 621 (Fla. 2004).

training exercises, and must provide for the following minimum periods of participation: (1) two months if the juvenile has been placed in a low-risk residential program; and (2) four months if the juvenile has been placed in a moderate-risk residential program.¹⁸

Bill's Proposed Changes: The bill amends s. 958.045, F.S., to provide that the DOC, upon receipt of a youthful offender, must: (1) screen the youthful offender for potential participation in a DJJ boot camp provided for in s. 985.309, F.S.; and (2) notify the state attorney when it requests court approval for placement of a youthful offender in a DJJ boot camp.

The bill also removes a 364-day jail sentence limitation that has been interpreted by Florida courts to be required by s. 985.045(5)(c), F.S., for youthful offenders who violate their probation after completing the DOC's basic training program. This limitation results in trial courts not being able to impose sentences, such as imprisonment, which it could have originally imposed in the case for the youthful offender. As discussed above, the Third District Court of Appeals in a recent case suggested that the Legislature review this issue, as the court believed that trial court judges, due to the sentencing limitation, may hesitate to recommend the basic training program to rehabilitate a youthful offender.

The bill's sponsor has filed a strike-everything amendment to this bill. See "Drafting Issues or Other Comments," *infra*.

C. SECTION DIRECTORY:

Section 1. Amends s. 958.045, F.S.; adds a requirement that the DOC screen youthful offenders for a boot camp program pursuant to s. 985.309, F.S., and that the DOC notify state attorneys when it requests that a youthful offender be placed in such boot camp program; makes grammatical changes; strikes current language that limits the sentence that may be imposed by a trial court to 364 days in jail for a youthful offender who has violated his or her probation after completing the DOC's basic training program.

Section 2. Provides that the act shall take effect on July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a prison bed impact as it will permit youthful offenders to be sentenced to prison, rather than jail, when that offender has violated his or her probation following his or her completion of the DOC's basic training program. The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this bill on the DOC.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

¹⁸ Section 985.309, F.S.

The bill may result in an indeterminate reduction in local government costs for jails, as the bill will permit youthful offenders to be sentenced to prison, rather than jail, when that offender has violated his or her probation following his or her completion of the DOC's basic training program.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends s. 958.045(2), F.S., to provide that the DOC, upon receipt of a youthful offender, must: (1) screen the youthful offender for potential placement in a DJJ boot camp; and (2) notify the state attorney when it requests court approval for placement of a youthful offender in a DJJ boot camp. These amendments, however, are technically incorrect as other sections of law require the DJJ, not the DOC, to determine who will be placed in the DJJ boot camps. Additionally, these amendments appear to permit the placement of youthful offenders in DJJ boot camps with juveniles. Youthful offenders, however, are statutorily prohibited from being housed with juveniles.

The sponsor of the bill has filed a strike-everything amendment that removes the amendments to s. 958.045(2), F.S., discussed above. The strike everything retains the bill's amendment of s. 958.045(5), F.S., which removes current law's 364-day jail sentence limitation for youthful offenders who have violated probation following the completion of the DOC's basic training program. Additionally, the strike-everything amends ss. 958.045(8) and 985.11, F.S., by removing references to an obsolete office and obsolete position titles and replacing the language with a reference to the DOC.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES