

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1548

SPONSOR: Senator Brown-Waite

SUBJECT: Prosecution of Juveniles

DATE: March 20, 2000

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Mannelli</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Senate Bill 1548 would require a 16 or 17 year old youth who commits any of the enumerated serious offenses under the “10-20-life” statute while possessing or discharging a firearm or destructive device to be subjected to the minimum mandatory penalties under that statute (possession results in a minimum of ten years in prison, except aggravated assault, possession of a firearm by a felon, or burglary of a conveyance results in a three year minimum; discharge results in a minimum of 20 years in prison; and discharge causing death or great bodily harm results in at least 25 years to life in prison.)

This bill substantially amends s. 985.227 of the Florida Statutes.

## II. Present Situation:

### Transferring a Juvenile for Adult Prosecution

Sections 985.226 and 985.227, F.S., prescribe the circumstances by which a juvenile may be transferred for prosecution as an adult in the criminal court. In some instances, the prosecutor is required to “direct file” an information on a juvenile and in some instances the prosecutor has the discretion to direct file an information. Similarly, the statute sets forth circumstances whereby the prosecutor must request that the court waive its jurisdiction over the juvenile and transfer the juvenile for criminal prosecution. There are also prescribed circumstances allowing the prosecutor to request the court to waive its jurisdiction over the juvenile and transfer him for criminal prosecution. Generally, these circumstances are based on the juvenile’s age, past criminal history, and the seriousness of the present offense.

Mandatory direct file can occur under the following circumstances (s. 985.227(2), F.S.):

- ▶ when a juvenile 16 or 17 years of age has a previous adjudication for an enumerated violent felony and the current offense is also violent;
- ▶ when a juvenile of any age has three previous felony adjudications which occurred at three separate hearings and which resulted in three residential commitments; or
- ▶ when a juvenile of any age has committed an act involving stealing a motor vehicle and it resulted in serious personal injury or death to another person.

Discretionary direct file can occur under the following circumstances (s. 985.227(1), F.S.):

- ▶ when a juvenile 14 or 15 years of age has committed an alleged enumerated violent felony and the prosecutor believes that the public interest requires adult prosecution; or
- ▶ when a juvenile 16 or 17 years of age commits any offense, except a misdemeanor unless the juvenile has two prior adjudications and one of those is for a felony, and the prosecutor believes that the public interest requires adult prosecution.

Mandatory request (waiver) for the court to transfer a juvenile to criminal court can occur under the following circumstances (985.226(2)(b), F.S.):

- ▶ when a juvenile 14 years of age or older has a previous adjudication for an enumerated violent felony and the current offense is also violent; or
- ▶ when a juvenile 14 years of age or older has three previous felony adjudications, one of which involved a firearm or violence, and the current offense is a felony.

Discretionary request (waiver) for the court to transfer a juvenile to criminal court can occur under the following circumstance (985.226(2)(a), F.S.):

- ▶ when a juvenile 14 years of age or older commits any delinquent act or violation of law.

### **Sentencing Options for Juveniles Transferred to Adult Court**

Section 985.233, F.S., defines sentencing options for juveniles transferred to adult court. A juvenile found to have committed a violation of law may, as an alternative to adult dispositions, be committed to the Department of Juvenile Justice (DJJ) for placement in a residential commitment program or be placed on DJJ community control. In determining whether to impose juvenile sanctions on a juvenile transferred to adult court, the court must consider the following factors:

- ▶ The seriousness of the offense and whether the community would best be protected by juvenile or adult sanctions;
- ▶ Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- ▶ Whether the offense was against persons or against property, with greater weight being given to offenses against persons, specifically if personal injury resulted;
- ▶ The sophistication and maturity of the offender;
- ▶ The record and previous history of the offender (prior arrests, referrals, placements on community control or prior commitments to DJJ);
- ▶ The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to services immediately available;
- ▶ Whether the DJJ has appropriate programs, facilities, and services immediately available; and
- ▶ Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

Section 985.233, F.S., requires a presentence investigation report prepared by the Department of Corrections with a recommendation by the DJJ on what sanctions would be appropriate following a finding of guilt. At the sentencing hearing, all parties are heard and the court may receive all relevant material related to sentencing the juvenile.

Under this statute, the trial court can impose an adult sanction or a juvenile sanction, but may not sentence the juvenile to a combination of adult and juvenile punishments. If the juvenile is given juvenile sanctions and the DJJ determines that the juvenile is not suitable for a community control program or placement in a residential commitment program, the court may revoke the previous adjudication, impose an adjudication of guilt, classify the juvenile as a youthful offender when appropriate and impose an adult sentence.

Under s. 775.087(2)(a), F.S., any person who commits certain enumerated dangerous crimes while possessing or discharging a firearm or destructive device is subject to the following minimum mandatory sentences: possession results in a minimum of ten years in prison (except aggravated assault, possession of a firearm by a felon, or burglary of a conveyance results in a three year minimum); discharge results in a minimum of 20 years in prison; and discharge causing death or great bodily harm results in at least 25 years to life in prison. (This law is commonly referred to as “10-20-life.”)

The enumerated offenses under this section include the following: murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated elder or disabled adult abuse; unlawful throwing,

placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; and drug trafficking.

The DJJ's data reveals that during FY 98/99, approximately 2,394 youths were alleged to have committed offenses that qualified under the 10-20-life statutory criteria. The DJJ estimates at least half of these youths were transferred and prosecuted in the adult system based upon the youth's criminal history and seriousness of these crimes.

### **III. Effect of Proposed Changes:**

Senate Bill 1548 would require a 16 or 17 year old youth who commits any of the enumerated serious offenses under the "10-20-life" statute (see present situation above) while possessing or discharging a firearm or destructive device to be subjected to the minimum mandatory penalties under that statute. These youths would have to be transferred into the adult court and receive the adult sanctions under s. 775.087(2)(a), F.S. Sanctions would be as follows: possession of a firearm or destructive device would result in a minimum of ten years in prison, except aggravated assault, possession of a firearm by a felon, or burglary of a conveyance would result in a three year minimum; discharge of a firearm or destructive device would result in a minimum of 20 years in prison; and discharge of a firearm or destructive device causing death or great bodily harm would result in at least 25 years to life in prison.

This bill would address the scenario in which an adult offender gives the gun used in the crime to a 16 year old juvenile offender who is participating in a robbery with the adult to avoid having the 10-20-life penalties imposed upon the adult because the 10-20-life penalties would not apply to the youth if he does not get transferred into the adult system, or if he is transferred, adult sanctions are not imposed by the court.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Estimating Conference has reviewed SB 1548 and has forecast an insignificant impact on the prison and supervised populations. The Conference's forecast is based on the assumptions that the use of a firearm in the commission of one of the qualifying offenses would currently be a determinant in deciding whether to charge a youth as an adult and that the majority of the offenders affected by this bill are already being charged as adults.

No additional impact on other criminal justice system entities is anticipated.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.