

STORAGE NAME: h0069a.cp
DATE: October 28, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 69
RELATING TO: Habitual Juvenile Offenders
SPONSOR(S): Representative Murman
TIED BILL(S): None

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

- (1) CRIME AND PUNISHMENT
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Under Florida law, the only instance which requires the imposition of adult sanctions for juvenile offenders prosecuted as adult, are those cases in which the offender is indicted for a capital offense or offense punishable by life, and the offender is found to have committed the offense for which he or she was indicted. In all other instances, juveniles prosecuted as adults can receive **either** an adult sentence or a juvenile sentence.

HB 69 eliminates an existing direct file criteria, which applies to juveniles of any age, that requires the state attorney to file an information in adult court if the juvenile has at least three previous separate felony adjudications of delinquency each of which resulted in a commitment to a residential program. In its place a new criteria is provided for offenders 16 and 17 years of age which requires the state attorney to direct file an information for a felony or misdemeanor offense if the offender has previously been adjudicated delinquent or had adjudication withheld for three felony offenses which are separated in time from each other by 45 days or more.

HB 69 also requires the imposition of adult sanctions in other circumstances where the prosecution of the juvenile in adult court is statutorily mandated. For juveniles ages 14 and older, transferred to adult court pursuant to a waiver hearing, the specific circumstances which would require the imposition of an adult sentence are as follows:

- ▶ Juveniles who at the time of the commission of a fourth or subsequent felony offense had previously been found to have committed, attempted to commit, or conspired to commit, three felonies at least one of which involved the use or possession of a firearm or the use of violence against a person.
- ▶ Juveniles who have been previously adjudicated delinquent for the commission of, attempt to commit, or conspiracy to commit, murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery and who have been found to have committed a second or subsequent violent crime against a person.

For juveniles ages 16 and 17 who are direct filed to adult court, the specific circumstances which would require the imposition of an adult sentence are as follows:

- ▶ Juveniles who have been previously adjudicated delinquent for the commission of, attempt to commit, or conspiracy to commit, murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery, or aggravated assault and who have been found to have committed a second or subsequent violent crime against a person.

- ▶ Juveniles who, pursuant to the bill's new direct file criteria, have previously been adjudicated delinquent or had adjudication withheld for three felony offenses which are separated in time from each other by 45 days or more, and who have been found to have committed their fourth offense.

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:

The Office of Juvenile Justice Delinquency Prevention (OJJDP) has defined "chronic offenders" as delinquent youths with three or more adjudicated offenses. In fiscal year 1996-97, there were 108,324 youths referred to Florida's Department of Juvenile Justice (DJJ) charged with delinquency offenses. Last year, the delinquency histories of these 108,324 youths were examined to identify Florida's chronic offenders. The examination revealed that while "chronic offenders" made up only **16.2 %** off all juvenile offenders, they accounted for **72.1%** of the adjudicated cases, and 46.2% of all cases.¹ Including all of their prior cases, the **108,324 youths** referred for delinquency in fiscal year 1996-97, accounted for **338,934 cases**.²

In fiscal year 1997-98, juveniles released from "minimum risk" commitment programs averaged nearly **9 prior** delinquency referrals upon entry into the programs. Juveniles

¹ DJJ - *Research Digest, Chronic Offenders FY 1996-97*, Issue 19, May 1998.

² DJJ - *Research Digest, Chronic Offenders FY 1996-97*, Issue 19, May 1998; *Profile of Delinquency Cases and Youth s Referred 1992/93 - 1996/97*.

released from "high risk" and "maximum risk"³ commitment programs averaged nearly **18 prior** delinquency referrals with more than **6 felony adjudications**.⁴

Transferring Juvenile Offenders to Adult Court According to a December 1998 publication by OJJDP entitled *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*, all 50 states allow for juveniles to be transferred to adult court for criminal prosecution. Among these, three states (New York, Connecticut, and North Carolina) have set the age of juvenile court jurisdiction to an upper age limit of 15. Ten states have set the upper age limit for juvenile court jurisdiction at age 16.

In fiscal year 1997-98, there were 107,095 youths referred to the DJJ. Out of these youths, 4660 were transferred to adult court for prosecution. Eighty-three percent of the youths transferred were between 16 and 17 years old.

Florida law provides three ways for a juvenile offender charged with a criminal offense to have his or her case prosecuted in adult court. The three ways are *indictment*, *waiver hearing*, and *direct file*. HB 69 addresses *waiver hearing* and *direct file* in situations where the state attorney is **required** to seek prosecution of a juvenile as an adult.

A *waiver hearing* is a proceeding conducted in juvenile court for the judge to authorize the transfer of a juvenile's criminal case for prosecution in adult court. In waiver hearings the juvenile court judge makes the final determination of whether adult prosecution of a juvenile is warranted based on the facts and circumstances surrounding the offense.

Currently, the state attorney must file a motion requesting the court to transfer a juvenile for prosecution as an adult if the juvenile was **14 years of age or older** at the time the offense was committed, and has been previously adjudicated delinquent for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, robbery, car jacking, home invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and is charged with a second or subsequent violent crime against a person. [s. 985.226(2), F.S.]. The state attorney must also move the court to transfer a juvenile who was **14 years-of-age or older** at the time of committing a fourth or subsequent felony offense, and who has been adjudicated delinquent or had adjudication withheld for the commission of, attempt to commit, or conspiracy to commit three felony offenses, at least one of which involved the use or possession of a firearm or violence against a person. [s. 985.226(b), F.S.].

Direct file is a procedure whereby, pursuant to statutory criteria, the state attorney is authorized, or mandated, to file an information (a formal charging document) against a juvenile offender which directly transfers the juvenile's case to adult court.

With regard to juveniles 16 and 17 years of age, the state attorney has the **discretion** to file an information in order to prosecute a juvenile as an adult for any felony offense. Also, if the juvenile has two previous adjudications or adjudications withheld for crimes ("delinquent acts"), at least one of which was a felony, the state attorney may direct file the juvenile to adult court for a misdemeanor offense. [s. 985.227(1)(b), F.S.].

³ "Maximum risk" programs have been recently renamed "juvenile correctional facilities or juvenile prisons."

⁴ DJJ - Recidivism Report For Commitment Programs FY 1997-98.

In addition, the state attorney **must** file an information if a juvenile is **16 or 17 years-of-age** and the juvenile has a previous adjudication for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery, or aggravated assault, and is charged with a second or subsequent violent crime against a person. [s. 985.227(2)(a), F.S.].

The state attorney is also required to direct file against a juvenile, regardless of age, if the juvenile has previously been adjudicated three or more times for felony offenses and three of the adjudications resulted in placement in a residential commitment facility [s. 985.227(2)(b), F.S.]. Due to the requirement of this provision that a juvenile's three prior felonies must have all resulted in residential commitment, this provision is very rarely used. Lastly, the state attorney must direct file against a juvenile, regardless of age, if he or she is charged with an offense involving theft of a motor vehicle and while driving the motor vehicle caused the death or serious bodily injury to a person. [s. 985.227(2)(c), F.S.].

Effect of Direct File or Waiver When a juvenile is transferred to adult court for prosecution, all other felony juvenile cases in which the issue of guilt remains pending, are transferred to the adult court for resolution. A juvenile transferred to adult court who is found guilty of the charged offense, or lesser included offense, must be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the adult court judge imposes juvenile sanctions pursuant to s. 985.233(4)(b), F.S. If, however, the child is acquitted of all charged offenses or lesser included offenses contained in the original case transferred to adult court, then all pending felony cases which were transferred from the juvenile court to the adult court are subject to the same sanctions such cases were subject to before they were transferred to the adult court. [s. 985.227(3), F.S.].

Adult Sentences For Juvenile Offenders Prosecuted as Adults Currently under Florida law, the only instance which requires the imposition of adult sanctions for juvenile offenders prosecuted as adult, are those cases in which the offender is indicted for a capital offense or offense punishable by life, and the offender is found to have committed the offense for which he or she was indicted. [s. 985.225(3), F.S.; s. 985.233(4), F.S.]. For example, if a 16 year old juvenile is indicted for first degree (premeditated) murder and is found guilty by a jury of second degree murder, the law does not require the imposition of an adult sentence for second degree murder because it was not the offense for which the juvenile was indicted. This is true even though second degree murder itself is an offense punishable by life. On the other hand, if the same offender had been indicted on second degree murder and found guilty of second degree murder, an adult sentence would have been mandatory.

In all other instances, juveniles prosecuted as adults can receive **either** an adult sentence or a juvenile sentence. [s. 985.233, F.S.]. Adult court judges are prohibited from sentencing a juvenile offender charged as an adult to a combination of juvenile sanctions and adult sanctions. [s. 985.233(4)(b), F.S.]. As a result, the judge must decide whether to impose exclusively adult court sanctions (which includes a youthful offender option discussed later), or juvenile sanctions.

A. The Criminal Punishment Code

All non-capital felony offenders in adult court are subject to the Florida Criminal Punishment Code (hereinafter "The Code") for offenses committed on or after October 1, 1998. [s. 921.002 - 921.0026, F.S.]. The Code establishes a "floor" or minimum sentence that a court may impose for the offenses before it, unless a reason for a more lenient

sentence (a "downward departure sentence") is authorized by statute. This minimum sentence is called the "lowest permissible sentence." The Code also provides the court with the discretion to impose a prison sentence up to the maximum allowed by statute for each offense.

Illustrating a couple of examples is perhaps best way to demonstrate the application of the Code.

Example 1. A juvenile offender is transferred to adult court on a charge of Burglary of an Occupied Structure, a second degree felony. The juvenile has a prior record consisting of two prior car burglaries (unoccupied and unarmed), grand theft of a motor vehicle, and two petit thefts. Under the Code, this offender would not score a minimum sentence which would require the court to sentence the offender to prison. This type of sentence is called a "non-state prison" sanction, and in this example it is the lowest permissible sentence authorized by the Code. On the other hand, the court in this circumstance would have the discretion to sentence this offender to prison for a period of up to 15 years.

Example 2. A juvenile is transferred to adult court on a charge of Robbery with a Firearm, a first degree felony punishable by life imprisonment. The juvenile has a prior aggravated assault with a deadly weapon, and a prior grand theft. Under the Code this offender would score a minimum sentence of approximately 56.5 months in state prison. In addition, the court would have the discretion to sentence this offender to prison for a period of up to life imprisonment.

Despite the "lowest permissible sentence" prescribed by the Code, the court may still sentence an offender to less than the lowest permissible sentence provided there are certain statutory mitigating factors present which justify a more lenient "downward departure" sentence.⁵

⁵ Because many mitigating factors would be present in juvenile transfer cases, the list of mitigating factors provided in S. 921.0026(2), F.S. is reproduced below:

- (2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:
 - (a) The departure results from a legitimate, uncoerced plea bargain.
 - (b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
 - (c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
 - (d) The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.
 - (e) The need for payment of restitution to the victim outweighs the need for a prison sentence.
 - (f) The victim was an initiator, willing participant, aggressor, or provoker of the incident.
 - (g) The defendant acted under extreme duress or under the domination of another person.
 - (h) Before the identity of the defendant was determined, the victim was substantially compensated.
 - (i) The defendant cooperated with the state to resolve the current offense or any other offense.
 - (j) The offense was committed in an unsophisticated manner and was an isolated incident

For those offenders who qualify for a non-state prison sanction under the Code, the sentence can include a period of incarceration of up to one year in the county jail followed by a form of community supervision for a period of years. Alternatively, a non-state prison sanction can consist entirely of community supervision. Community supervision can be either in the form of community control (stricter supervision) or probation, both of which are monitored by the Department of Corrections. During the period of community control or probation, the offender would have to report to his correctional probation officer on a regular basis, and comply with specific conditions.

B. Youthful Offenders

A large number of juveniles transferred to adult court qualify for a youthful offender sentence notwithstanding the Code. [s. 958.04(2), F.S.].

1. Imposition of Youthful Offender Sanctions by the Courts -

Under s. 958.04, the court may sentence a juvenile transferred to adult court as a youthful offender if the offender has not previously been classified as a youthful offender and has not been found guilty of a capital or life felony. (Both of the offenders in the examples given previously would qualify for a youthful offender sentence.) As a youthful offender a court may either adjudicate the offender guilty or withhold adjudication of guilt. The total length of time a youthful offender sentence may last is six years (unless the offense is a third degree felony in which case the sentence can be for no more than five years). A youthful offender may be sentenced entirely to probation or community control. In addition, as a condition of probation or community control a youthful offender may be incarcerated for up to 364 days in a county facility, or a Department of Corrections probation and restitution center, or a community residential facility. [s. 958.04(2)(b), F.S.]. A youthful offender sentence can also be a split sentence where the offender is sentenced to probation or community control upon completion of a period of incarceration between 1 to 4 years. The maximum youthful offender sentence is 4 years incarceration followed by 2 years of community control. [s. 985.04(2)(c), F.S.].

2. Designation of Youthful Offenders by the Department of Corrections -

Florida law also authorizes the Department of Corrections to designate inmates as youthful offenders if they meet the criteria set forth in s. 958.04, F.S., and if they are eligible for control release pursuant to s.947.146, F.S. [s.958.045(8), F.S.]. Consistent with this provision, the Department of Corrections may classify a qualifying inmate as a youthful offender if the inmate is either 24 years old or less and is serving a sentence of ten years or less, or 19 years old or less and safety concerns require placement in a youthful offender facility. [s. 958.11(6), F.S.].

3. The Basic Training Program

for which the defendant has shown remorse.

(k) At the time of the offense the defendant was too young to appreciate the consequences of the offense.

(l) The defendant is to be sentenced as a youthful offender.

Under s. 958. 045, F.S., the Department of Corrections must develop and implement a basic training program for youthful offenders. The basic training program must be at least 120 days in duration. The program includes marching drills, manual labor assignments, physical training, personal and general education development, basic education courses, and rehabilitation programs.

The Department of Corrections is required to screen all youthful offenders for suitability into the basic training program. If an offender meets the criteria, and space is available, the Department must request that the sentencing court give approval for the offender to participate in the program. If approval is granted and the offender satisfactorily completes the program, the court must modify the sentence imposed and place the offender on probation. [s. 958.045(5)(c), F.S.].

Through the basic training program a youthful offender can reduce a ten-year prison sentence (having it converted to probation) by completing the 120-day program.

C. EFFECT OF PROPOSED CHANGES:

HB 69 eliminates an existing direct file criteria, which applies to juveniles of any age, that requires the state attorney to file an information in adult court if the juvenile has at least three previous separate felony adjudications of delinquency each of which resulted in a commitment to a residential program. In its place a new criteria is provided for offenders 16 and 17 years of age which requires the state attorney to direct file an information for a felony or misdemeanor offense if the offender has previously been adjudicated delinquent or had adjudication withheld for three felony offenses which are separated in time from each other by 45 days or more.

HB 69 also requires the imposition of adult sanctions in certain circumstances where the prosecution of the juvenile in adult court is statutorily mandated. For juveniles ages 14 and older, transferred to adult court pursuant to a waiver hearing, the specific circumstances which would require the imposition of an adult sentence are as follows:

- ▶ Juveniles who at the time of the commission of a fourth or subsequent felony offense had previously been found to have committed, attempted to commit, or conspired to commit, three felonies at least one of which involved the use or possession of a firearm or the use of violence against a person.
- ▶ Juveniles who have been previously adjudicated delinquent for the commission of, attempt to commit, or conspiracy to commit, murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery and who have been found to have committed a second or subsequent violent crime against a person.

For juveniles ages 16 and 17 who are direct filed to adult court, the specific circumstances which would require the imposition of an adult sentence are as follows:

- ▶ Juveniles who have been previously adjudicated delinquent for the commission of, attempt to commit, or conspiracy to commit, murder, sexual battery, armed or strong-armed robbery, car jacking, home invasion robbery, aggravated battery, or aggravated assault and who have been found to have committed a second or subsequent violent crime against a person.

- ▶ Juveniles who, pursuant to the bill's new direct file criteria, have previously been adjudicated delinquent or had adjudication withheld for three felony offenses which are separated in time from each other by 45 days or more, and who have been found to have committed their fourth offense.

Due to a drafting error, HB 69 erroneously reflects that S.985.233(4)(c),(d), and (e) F.S., are stricken. It is also drafted to the 1998 Florida Statutes. It is anticipated that these errors will be corrected by a strike-everything amendment to be presented to the Committee. (See Other Comments)

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Providing a title for the act.

Section 2. Relating to mandatory direct file.

Section 3. Relating to sentencing

Section 4. Reenacting s. 985.226(2)(b), F.S.

Section 5. Providing and effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet determined the fiscal impact of this bill on the Department of Corrections (DOC). However, at least some of the increased costs caused by this bill upon the DOC will be offset by an unquantifiable yet corresponding cost savings upon the DJJ resulting from the removal of these offenders from the juvenile justice system.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

In addition to correcting technical deficiencies with the original bill draft, the anticipated strike-everything amendment modifies the bill's new direct filing and adult sentencing criteria for juvenile's 16 and 17 years of age who have previously been adjudicated or had adjudication withheld for three felony offenses, to require transfer and sentencing of the juvenile in adult court upon their fourth **felony** offense, rather than for **any** level of offense.

In addition, the strike-everything amendment provides that the new direct file criteria described above does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

DAVID DE LA PAZ

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