

STORAGE NAME: h1705.cpcs.doc

DATE: March 21, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME PREVENTION, CORRECTIONS & SAFETY  
ANALYSIS**

**BILL #:** HB 1705 (PCB CPCS 01-06)

**RELATING TO:** Imposition of a Death Sentence

**SPONSOR(S):** Committee on Crime Prevention, Corrections & Safety and Representative Bilirakis

**TIED BILL(S):**

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 1
  - (2)
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

Currently in Florida, a death sentence cannot be imposed for a capital crime on anyone who was under 17 years of age at the time the crime was committed. In Brennan v. State, 754 So.2d 1 (1999) the Florida Supreme Court held that the imposition of a death sentence on a person convicted for a first degree murder committed when he 16 years of age, constitutes cruel **or** unusual punishment in violation of the Florida Constitution.

Although the Court in Brennan rested its ruling on Florida's Constitutional prohibition against cruel **or** unusual punishment, the Court also clearly indicated that **if** the Federal Constitutional prohibition against cruel **and** unusual punishment had been applied, they would have reached the same result. The Court stated:

However, there is an important aspect of the Stanford opinion that further supports our determination that **the imposition of the death penalty in this case would be unconstitutional under both the Florida and United States Constitutions.** Id. at 16.

Florida statute, however, contains no express provision which establishes a minimum age for the imposition of a death sentence.

This bill expressly establishes the minimum age for the imposition of a death sentence in statute. Under the bill, no one who commits a capital crime at 16 years of age or younger may be sentenced to death. With respect to the imposition of a death sentence on persons who were 17 years of age or older at the time they commit a capital crime, the law would remain unchanged.

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:

Currently in Florida, a death sentence cannot be imposed for a capital crime on anyone who was under 17 years of age at the time the crime was committed. In Brennan v. State, 754 So.2d 1 (1999) the Florida Supreme Court held that the imposition of a death sentence on a person convicted for a first degree murder committed when he 16 years of age, constitutes cruel **or** unusual punishment in violation of Article I, Section 17 of the Florida Constitution.<sup>1</sup>

Although the Court in Brennan rested its ruling on the State Constitutional prohibition against cruel **or** unusual punishment, they also clearly indicated that **if** the Federal Constitutional prohibition against cruel **and** unusual punishment had been applied (which is the standard that would be applied if HB 951 were passed by the Legislature and approved by the voters) they would have reached the same result. The Court stated:

However, there is an important aspect of the Stanford opinion that further supports our determination that **the imposition of the death penalty in this case would be unconstitutional under both the Florida and United States Constitutions.** Brennan, *supra* at 16.

The Stanford opinion is a U.S. Supreme Court opinion which held that it is not per se cruel and unusual punishment to execute a person 16 or 17 years of age at the time of the crime. The Florida Supreme Court distinguished the Stanford case from the Brennan case based on statutory differences between Florida's statutory scheme and the ones at issue in Stanford. With respect to these differences, the Florida Supreme Court stated in Brennan:

The Legislature's failure to impose a minimum age, the legislative mandate that a child of any age indicted for a capital crime shall be subject to the death penalty, and the failure to set up a system through our juvenile transfer statutes that "ensure[s] individualized consideration of the maturity and moral responsibility" render our statutory scheme suspect under the federal constitution and the reasoning of Stanford as it

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<sup>1</sup> At the time this opinion was issued, Article I, Section 17 of the Florida Constitution prohibited cruel **and** unusual punishment based on the ratification of a constitutional amendment which had been approved in November of 1998 (which is identical to the amendment proposed in HB 951/SB 124).

applies to sixteen-year-old offenders. (citation omitted) This also distinguishes our statutory scheme from the Virginia statute recently upheld as constitutional by the Virginia Supreme Court. (citation omitted)

...

If given literal effect, our statutory scheme would unconstitutionally authorize the imposition of the death penalty on a child of any age.

Since the issuance of the Brennan opinion, nothing has changed with respect to Florida's statutory scheme that would provide any basis for concluding that the Florida Supreme Court would uphold a death sentence imposed on a person who was 16 years of age at the time of the crime, regardless of whether the standard applied was *cruel or unusual* punishment, or *cruel and unusual* punishment.

There is no statutory provision in current law which establishes a minimum age for the imposition of a death sentence.

C. EFFECT OF PROPOSED CHANGES:

This bill expressly establishes the minimum age for the imposition of a death sentence in statute. Under the bill, no one who commits a capital crime at 16 years of age or younger could be sentenced to death. A person convicted of a capital felony committed when the person was 16 years of age or younger must be sentenced to life imprisonment without the possibility of parole. With respect to the imposition of a death sentence on persons who were 17 years of age or older at the time they commit a capital crime, the law would remain unchanged.

D. SECTION-BY-SECTION ANALYSIS:

See Effects of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CPCS:

Prepared by:

Staff Director:

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David De La Paz

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