SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 812

SPONSOR: Criminal Justice Committee and Senator Crist

SUBJECT: Capital Sentencing Proceedings

DATE: April 24, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon/Erickson	Cannon	CJ	Favorable/CS
2.			APJ	
3.			AP	
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 812 provides that no person 16 years of age or younger when he or she committed a capital crime may be sentenced to death. The penalty for such person is life imprisonment without possibility of parole (as provided in current law). A person 17 years of age or older when he or she committed a capital crime may be sentenced to death. If such person is not sentenced to death, the penalty is life imprisonment without possibility of parole (as provided in current law).

This CS creates s. 921.1415, F.S., and substantially amends s. 775.082, F.S.

II. Present Situation:

Section 985.225(1), F.S., provides, in part, the following:

> (1) A child of any age who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the court as set forth in s. 985.219(7) unless and until an indictment on the charge is returned by the grand jury. When such indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as an adult:
> (a) On the offense punishable by death or by life imprisonment. . . .

Section 921.141(6)(g), F.S., provides that "age of the defendant at the time of the crime" is a circumstance that can be raised in mitigation of a death sentence.

Article I, Section 17 of the Florida Constitution prohibits "cruel or unusual" punishment. In *Tillman v. State*, 591 So. 2d 167, 169 (Fla. 1991), the Florida Supreme Court, discussing proportionality review in a capital case (review conducted by the Court in which the Court compares the totality of circumstances in a capital case with other capital cases), opined:

> The requirement that death be administered proportionately has a variety of sources in Florida law, including the Florida Constitution's express prohibition against unusual punishments. (footnote omitted) Art. I, Sec. 17, Fla. Const. It clearly is "unusual" to impose death based on facts similar to those in cases in which death previously was deemed improper. *Id*. Moreover, proportionality review in death cases rests at least in part on the recognition that death is a uniquely irrevocable penalty, requiring a more intensive level of judicial scrutiny or process than would lesser penalties. Art. I, Sec. 9, Fla. Const.; *Porter* [*v. State*, 564 So.2d 1060, 1064 (Fla.1990)].
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> Proportionality review also arises in part by necessary implication from the mandatory, exclusive jurisdiction this Court has over death appeals. Art. V, Sec. 3(b)(1), Fla. Const. The obvious purpose of this special grant of jurisdiction is to ensure the uniformity of death-penalty law by preventing the disagreement over controlling points of law that may arise when the district courts of appeal are the only appellate courts with mandatory appellate jurisdiction. *See id.* Thus, proportionality review is a unique and highly serious function of this Court, the purpose of which is to foster uniformity in death-penalty law.

In a footnote in *Tillman*, the Court stated that "[t]he Florida Constitution prohibits 'cruel *or* unusual punishment.' Art. I, Sec. 17, Fla. Const. (emphasis added). The use of the word "or" indicates that alternatives were intended. *Cherry Lake Farms, Inc. v. Love*, 129 Fla. 469, 176 So. 486 (1937)." *Id*., at 170, n. 2.

In *Thompson v. Oklahoma*, 487 U.S. 815 (1988) (plurality), the United States Supreme Court held that the imposition of a death sentence on any person less than 16 years of age violates the Eighth Amendment of the Federal Constitution.

In *LeCroy v. State*, 533 So.2d 750 (Fla. 1988), the Florida Supreme Court held that the imposition of a death sentence on LeCroy, who was 17 years of age when he committed the capital crime, was not cruel and unusual punishment. The penalty issue appears to involve the Eighth Amendment of the Federal Constitution and not Article I, Section 17 of the Florida Constitution. The Court determined that legislative history indicated that the Legislature intended that persons under 18 years of age may be subject to the death penalty. The Court stated that "[w]hatever merit there may be in the argument that the legislature has not consciously considered and decided that persons sixteen years of age and younger may be subject to the death penalty, and that issue is not present here, it cannot be seriously argued that the legislature has not consciously decided that persons seventeen years of age may be punished as adults." *Id*., at 757.The Court noted and distinguished *Thompson* from the case before it based on a number of factors including that *Thompson* did not "suggest an intention to draw an arbitrary bright line" between 17-years-olds and 18-year olds. *Id*.

In *Allen v. State*, 636 So.2d 494, 498 (Fla. 1994), the Florida Supreme Court (citing to the footnoted statement in *Tillman* that alternatives were intended by the use of the word "or" in Section 17), held that "the death penalty is either cruel or unusual if imposed upon one who was under the age of sixteen when committing the crime; and death thus is prohibited by article I, section 17 of the Florida Constitution." (footnote omitted) Of relevance to the Court in arriving at its decision was the undisputed fact that a death sentence was "almost never imposed on defendant's of Allen's age." *Id*., at 497. Allen committed the capital crime at age 15. The Court also believed that *Thompson* supported its decision but indicated that "the exact precedent set in *Thompson's* plurality opinion and concurrence may not be conclusively clear. . . ." *Id.*, at 498, n. 7.

In *Stanford v. Kentucky*, 492 U.S. 361 (1989) (plurality), the United States Supreme Court held that the imposition of capital punishment on any person who was sentenced to death for a capital crime he or she committed at 16 or 17 years of age does not offend the Eighth Amendment's prohibition against cruel and unusual punishment.

In *Brennan v. State*, 754 So.2d 1 (Fla. 1999), the Florida Supreme Court held that the imposition of the death sentence on Brennan, for a crime he committed when he was 16 years of age, constituted "cruel or unusual punishment" under Article I, Section 17 of the Florida Constitution. The Court found the case before it virtually identical to *Allen* "both because of the infrequency of the imposition of the death penalty on juveniles age sixteen at the time of the crime and because, since 1972, each death sentence imposed on a defendant who was sixteen at the time of the crime has been overturned by this Court." *Id.*, at 7. The Court stated that it was bound by its decision in *Allen*.

Further, while the issue on appeal did not involve the Eighth Amendment of the Federal Constitution, the Court did specifically indicate that "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 the United States Constitutions. . . ." *Id.*, at 8. The Court was persuaded that the *Stanford* holding was specific to the type of state laws reviewed there. The Court found those laws to be distinguishable from Florida's laws. In *Stanford*, Justice Scalia, the author of the plurality opinion, had noted the "individualized consideration" given to the defendant's age in the state laws it reviewed, e.g., laws requiring individualized consideration of the maturity and moral responsibility of a juvenile defendant before certifying the juvenile for trial as an adult. *But see id.*, at 14, 21-22 (Harding, C.J., joined by Wells, J. and Overton, Senior Justice, concurring in part, dissenting in part) (Justice Harding arguing that the majority had taken Justice Scalia's discussion of the individualized considerations out of context, which, if placed in context, indicated that Justice Scalia was only concerned with the general concept of individualized testing for maturity and moral responsibility, a concern Justice Harding believed was addressed by the age mitigator in Florida law).

While the Court has not expressly indicated that it has reconsidered or receded from its decision in *LeCroy*, Justice Harding argued in *Brennan* that *Allen*, the case relied on by the majority in *Brennan*, is in conflict with *LeCroy*:

> Using the logic of *Allen*, all juveniles, including seventeen-year olds, fall within the purview of the *Allen* test. The majority in this case and in *Allen* point out that no fifteen- or sixteen-year-olds have been executed in over a quarter of a century. The same is also true of seventeen-year olds. Thus, it seems to me that the reasoning in *Allen* would prevent a seventeen-year-old from being executed despite this Court's ruling in *LeCroy* to the contrary.

Id. at 17.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 812 provides that no person 16 years of age or younger when he or she committed a capital crime may be sentenced to death. The penalty for such person is life imprisonment without possibility of parole (as provided in current law). The effect is to codify the *Brennan* holding and statutorily set a minimum age threshold for imposition of a death sentence (such threshold is currently governed by case law).

The CS further provides that a person 17 years of age or older when he or she committed a capital crime may be sentenced to death. If such person is not sentenced to death, the penalty is life imprisonment without possibility of parole. This is merely a restatement of current law. Under current law, a person 17 years of age or older who is convicted of a capital crime (involving murder) would be subject to either a death sentence or life imprisonment without possibility of parole.

The CS takes effect upon becoming law.

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:

There should be no fiscal impact as a result of this CS in that the CS is only codifying a minimum age threshold for imposition of a death sentence that is already established de facto and de jure as a result of the *Brennan* decision.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.