

STORAGE NAME: h1615.cpcs.doc
DATE: February 17, 2002

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

BILL #: HB 1615
RELATING TO: Imposition of Death Sentence
SPONSOR(S): Representative Bilirakis
TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3) HEALTHY COMMUNITIES
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING OR MODIFYING ANY LEGISLATION OR STATUTE.

The bill provides that no person under the age of 18 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 age 18 or older at the time of the commission of a capital case is subject to either a death sentence or life imprisonment without possibility of parole (as provided in current law).

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:

There is no statutory provision in current law which establishes a minimum age for the imposition of a death sentence. Rather, case law governs the issue. 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.¹

Although the Court in Brennan rested its ruling on the State Constitutional prohibition against cruel or unusual punishment, they also 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. Brennan, *supra* at 8..

The Stanford² opinion is a plurality 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 facts of Brennan 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:

¹ In November of 1998, the voters approved a constitutional amendment which changed the provision of Article I, Section 17 of the Florida Constitution from prohibiting cruel or unusual punishment to prohibiting cruel **and** unusual punishment in order to conform to the federal constitution. In Armstrong v. Harris, 773 So.2d 7 (Fla. 2000), the Florida Supreme Court held that the ballot summary had been inaccurate and struck down the amendment. During the 2001 session, the legislature passed an identical amendment which will be on the ballot in November 2002. (HJR 951)

² Stanford v. Kentucky, 109 S.Ct. 2969 (1989).

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 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.

C. EFFECT OF PROPOSED CHANGES:

The bill provides that the death sentence is an authorized punishment for persons who are 18 years of age or older at the time of the commission of a capital crime but is not an authorized punishment for any person who, at the time of the commission of the crime, was less than 18 years of age. A person who is less than 18 years of age at the time of the commission of a capital crime will receive a life sentence without the possibility of parole. The bill does not affect current law that provides that a person age 18 or older who is convicted of a capital crime (involving a death) would be subject to either a death sentence or life imprisonment without possibility of parole.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 counties or municipalities 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:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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