

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1007 w/CS Sentencing Juveniles
SPONSOR(S): Rep. Harper
TIED BILLS: **IDEN./SIM. BILLS:** SB 2104

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Juvenile Justice (Sub)	5 Y, 0 N	Maynard	De La Paz
2) Public Safety & Crime Prevention	15 Y, 0 N w/CS	Maynard	De La Paz
3) Public Safety Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

Under current law, juveniles direct filed to the adult court system may not be sentenced to a mixture of adult and juvenile sanctions.

HB 1007 w/CS provides that juveniles transferred to adult court may be sentenced to juvenile sanctions or to a combination of juvenile and adult sanctions. The bill directs the Department of Juvenile Justice to provide the sentencing court, the state attorney, the Department of Corrections, and the juvenile's defense counsel, with a written report outlining the basis for its objections if it determines a juvenile sanction to be inappropriate. The bill changes the age that a direct filed juvenile can remain in a juvenile commitment or probation program from 19 to 21 years. The bill also allows the Department of Juvenile Justice to discharge the juvenile from a program if it files a written notice with the clerk of the court no later than 30 days before discharge and provides copies to the sentencing judge, the Department of Corrections, the state attorney, and the juvenile's defense counsel.

The bill further provides that any failure to object by the noticed parties within the 30-day time period, is construed as an approval for discharge. The bill also allows a juvenile to be placed under the supervision of the Department of Corrections and to be committed to the Department of Juvenile Justice for treatment. The bill provides that if the juvenile is to be released from the commitment to the Department of Juvenile Justice and has been placed under supervision of the Department of Corrections, that the Department of Juvenile Justice will not release the juvenile until the Department of Corrections meets with the juvenile to explain the terms of probation. The court may order, as a condition of probation or commitment, that the juvenile attain an appropriate educational goal.

HB 1007 w/CS also prohibits prosecutors from offering to refrain from filing an adult charge in exchange for a juvenile's waiver of his or her right to be released within the time periods provided in s. 985.215(5), F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1007b.ps.doc
DATE: March 31, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Current Law

Under current law, a juvenile may be tried and sentenced as an adult. s 985.225, F.S.; 985.226, F.S.; 985.227. F.S., and 985.233. F.S. Once a child has been transferred to the jurisdiction of adult court, the court has the option to sentence the juvenile as an adult, pursuant to Chapter 958, F.S. (Youthful Offender Statute) or as a juvenile. A child convicted of an offense punishable by death or life imprisonment or convicted of offenses pursuant to s. 985.226(2)(b) or s. 985.227(2)(a or b), F.S., must be sentenced as an adult. However, for less serious offenders, the judge retains the power to dispose of the case with juvenile sanctions as an alternative to adult sanctions.

Sentencing to juvenile sanctions:

In these instances, the court may impose juvenile sanctions. If juvenile sentences are imposed, the court must adjudicate the child to have committed a delinquent act. Current law specifically forbids the mixing of adult and juvenile sanction for youths who have been adjudged to have committed a delinquent act. However, if the court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department must return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions. Upon adjudicating a child delinquent under this subsection, the court may:

- Place the child in a probation program under the supervision of the department for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court.
- Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.
- Order disposition pursuant to s. 985.231, F.S., as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

Imposition of adult sanctions upon failure of juvenile sanctions:

If the Department of Juvenile Justice believes that a child is not suitable (because of a new law violation or violation of probation) for a commitment program, a juvenile probation program, or a treatment program, the department must provide the sentencing court, the state attorneys office, and the public defender with a written report outlining the basis for its objections to the juvenile sanction. Upon a hearing within 30 days, the court may revoke the previous adjudication, impose

an adjudication of guilt, and impose any sentence which it may have lawfully imposed at the original sentencing hearing, giving credit for all time spent by the child in the department.

The Department of Correction's, Bureau of Research and Data Analysis reports that in Fiscal Year 2002-2003, there were 2,557 juveniles (defined as an offender under the age of 18 at the time of the offense) sentenced as adults and placed on adult community supervision supervised by the Department of Corrections. Of this total, 503 were placed on community control (house arrest). The Department of Juvenile Justice estimates that for FY 2002-03 there were 2,508 transferred from juvenile court to adult court, with 537 of those returned to DJJ to receive juvenile sanctions. Of those, approximately 50% were committed to a residential program.

Some judicial circuits have reported a problem wherein state attorneys offer to refrain from direct filing a youth under their discretionary power provided in s. 985.227(1), F.S. in exchange for a juvenile's waiver from release from secure detention within the time periods provided in s. 985.215(5), F.S. Section 985.215(5), F.S. requires that an adjudicatory hearing (trial) for a juvenile be held with 21 days from when the youth is taken into custody or 30 days for more serious offenses, otherwise the youth may be released from custody. Although there is a provision which allows the court to extend the period of detention beyond the 21 days "for good cause," these periods represent the maximum periods of time allowable to resolve charges against a juvenile held in secure detention. The decision to direct file a juvenile must ordinarily be made within this time period, to avoid the juvenile's release prior to the resolution of charges. However, in some circuits, state attorneys circumvent these time periods by agreeing to not direct file a youth in exchange for the child's agreement not to request release within the time periods provided in s. 985.215(5), F.S. As a result, some juveniles have in extreme circumstances spent months in a detention facility. Detention facilities are designed to be temporary places to hold a youth secure, and do not have the types of services and capabilities of a commitment program within the Department of Juvenile Justice.

Proposed Changes Under HB 1007

HB 1007 w/CS provides that juveniles transferred to adult court pursuant to the provisions other than the mandatory provisions of s. 985.226(2)(b), F.S. or s. 985.227(2), F.S. may be sentenced to juvenile sanctions or to a combination of juvenile and adult sanctions. The bill directs the Department of Juvenile Justice to provide a written report to the sentencing court, the state attorney, the Department of Corrections, and the juvenile's defense counsel. The written report must outline the basis for its objections if it determines a juvenile sanction to be inappropriate. The bill changes the age that a juvenile can remain in a juvenile commitment or probation program from 19 to 21 years. The bill also allows the Department of Juvenile Justice to discharge the juvenile from a program if it files a written notice with the clerk of the court no later than 30 days before discharge and provides copies to the sentencing judge, the state attorney, the Department of Corrections, and the juvenile's defense counsel

The bill further provides that any failure to object by the court, public defender, or state attorney within the 30-day time period is construed as an approval for discharge. The bill also allows a juvenile to be placed under the supervision of the Department of Corrections and to be committed to the Department of Juvenile Justice for treatment. The bill provides that if the juvenile is to be released from commitment to the Department of Juvenile Justice and has been placed under supervision of the Department of Corrections, that the Department of Juvenile Justice may not release the juvenile until the Department of Corrections meets with the juvenile to explain the terms of probation. The court may order, as a condition of probation or commitment, that the juvenile attain an appropriate educational goal. Failure by the juvenile ordered on adult probation to complete a juvenile commitment program would constitute an adult violation of probation.

HB 1007 w/CS also prohibits prosecutors from offering to refrain from filing an adult charge in exchange for a juvenile's waiver of his or her right to be released within the time periods provided in s. 985.215(5), F.S.

C. SECTION DIRECTORY:

Section 1. amends s. 985.233(4)(b), F.S.

Sections 2, 3, 4, 5 reenacts ss. 985.225, 985.226, 985.227(3) , and 985.31 F.S., respectively, for the purpose of incorporation.

Section 6. providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Department of Corrections Comments

Since it is not possible to predict if there would be an increase in the number of juveniles with adult supervision with any degree of certainty, the actual impact is indeterminate. The Criminal Justice Estimating Conference has not met to determine the fiscal impact of this bill.

Department of Juvenile Justice Comments

"During FY 2002-03, 2,508 youth were transferred from juvenile court to the adult court. Of the 2,508 youth transferred, approximately 21 percent or 537 youth were returned to the Department of Juvenile Justice to receive juvenile sanctions*. Under the proposed bill, the remaining 1,971 offenders could be eligible for juvenile sanctions, including probation and/or residential commitment. Assuming that 50 percent or 986 of the 1,971 youth eligible for juvenile sanctions under this legislation are returned to DJJ, it is estimated that 493 youth would receive residential placement and 493 or 50 percent would be placed on probation.

The cost for residential placement is estimated to be \$18,354,398 per year (average high and moderate-risk per diem X # of youth X 365 days or \$102 per diem X 493 youth X 365 days= \$18,354,390. . The cost of probation supervision is calculated to be \$4.13 per day, and the average number of days on supervision per youth is 261 days. Multiplying the N of 493 times the rate of \$4.13 times the average days of supervision (261 days) produces the fiscal impact of \$531,419 dollars for this portion of the bill.

However the bill adds 2 years from age 19 to age 21 for an upper limit of the jurisdiction of the Department of Juvenile Justice. Currently when a youth reaches age 19 the authority to continue the youth on probation under DJJ ends. There will be a tendency for the courts to prolong supervision because of the serious nature of the criminal charges, which originally compelled the state attorney to seek adult sanctions. Even a conservative estimate requires the doubling of the estimated number of days of supervision from 261 to 522 for this sub-population of youth. The

result is a fiscal impact of \$1,062,839 on the Probation program. The estimated fiscal impact of this legislation, if approved, is \$19,417,229.”

* Of the 537 youth sentenced to juvenile sanctions, approximately 50% were committed to residential placement and 50% were placed on juvenile probation (DJJ Data and Research 2004).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may impact Department of Juvenile Justice program providers because of increased referral for youths not otherwise eligible to receive juvenile sanctions.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet evaluated this bill. Although the Department of Juvenile Justice has noted that the bill could have a potentially significant impact, the Department of Corrections has indicated that number of youths who are receiving adult sanctions who under the bill might receive “mixed sanctions” can not be accurately determined.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Because the bill is a criminal law, there is no local mandates issue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Department of Corrections Comments

This bill has a potential impact on the Department of Corrections community supervision population. It is impossible to predict how many juveniles will be sentenced to dual sanctions. However, the benefits of this bill in providing a measure of increased public safety by providing adult supervision services and the positive impact of juvenile commitment programs designed for this group of offenders indicates that the courts may utilize the dual sanction option frequently.

Department of Juvenile Justice Comments

This bill blurs the distinction between adult and juvenile sanctions. Commitment programs in the Department are designed, in part, to address the rehabilitative needs of children who have been adjudicated delinquent. Successful completion of the program is often followed by a term of conditional release under the supervision of the Department to help re-integrate the child into his community. Supervision under the Department of Corrections would not provide the same services available through Juvenile Justice. Currently, offenders who successfully complete their juvenile sanctions are free from supervision after turning 21, or in some cases, 22. Under this bill, those youth who successfully complete their commitment program are still subject to Department of Correction's supervision. It is not clear whether failure to complete the commitment program successfully would be a violation of adult probation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2004, the Juvenile Justice Subcommittee voted to favorably recommend HB 1007 with one amendment. The amendment removes the term "alternative juvenile sanctions" from the list of possible sanction to which a judge may sentence a youth who has failed a court ordered program, because this term is undefined in ch. 985, F.S. The amendment also adds the Department of Corrections to the list of parties who must be noticed if the Department of Juvenile Justice wishes to discharge a youth from a program. Finally, the amendment clarifies that if a youth is ordered to probation under DOC, and to complete a juvenile program, that a failure by the youth to successfully complete the program constitutes an adult VOP.

On March 31, 2004, the Committee on Public Safety & Crime Prevention passed the bill with a committee substitute. The committee substitute incorporated an amendment recommended favorably by the Juvenile Justice subcommittee and described above. The committee substitute also incorporated an amendment which would prohibit prosecutors from offering to refrain from filing an adult charge in exchange for a juvenile's waiver of his or her right to be released within the time periods provided in s. 985.215(5), F.S.