The Florida Senate

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Committee on Criminal Justice Senator Stephen R. Wise, Chair

RESENTENCING YOUTHFUL OFFENDERS WHO VIOLATE THE TERMS OF PROBATION

SUMMARY

Florida's Youthful Offender Act was created to combine punishment and incentives for young people to improve their chances of being rehabilitated at an early age. However, the statutes have been amended over the years such that an inconsistency and limitation has been created within the sentencing language. As a result, prosecutors and courts are reluctant to rely on the statutes that might otherwise provide an opportunity to rehabilitate young defendants.

Under current law, once a youthful offender successfully completes a basic training or "boot camp" program he or she must be sentenced to probation. If the youthful offender then violates the terms of that probation he or she may not be sentenced to prison but only to 364 days in the county jail as punishment. Strangely enough, violating probation is often a method that can reduce the length of a sentence.

Appellate courts have noted in their decisions that this confusing limitation on sentencing probation violators was probably not the intention of the Legislature. After researching the law and surveying circuit court judges, state attorneys, public defenders, and the Department of Corrections, staff agrees with the appellate court decisions. Staff recommends that a committee bill be drafted to eliminate the current restrictions placed on judges when sentencing youthful offenders who successfully complete their basic training and then violate the terms of their mandatory probation.

BACKGROUND

CHAPTER 958 – THE YOUTHFUL OFFENDER ACT

History and Legislative Intent

The Florida Youthful Offender Act was adopted in 1978. It was created to improve the possibilities of rehabilitating and reintegrating young offenders into society over a short span of time. This was to be accomplished by providing enhanced educational, substance abuse, and counseling opportunities while making certain that the young people were not placed with older, more experienced criminals in prison.[1]

Criteria for Participation

The trial court may sentence someone as a youthful offender who: is at least 18 years old or who has been transferred for criminal prosecution pursuant to ch. 985, F.S., has entered a plea or been found guilty of a felony other than a capital or life felony which was committed before the defendant's 21st birthday; and has not been previously classified as a youthful offender.[2]

The statutes also provide another method for a defendant to receive youthful offender treatment. The Department of Corrections may classify someone as a youthful offender if he or she is at least 18 years old or has been transferred for prosecution to the criminal division of the court, has not previously been classified as a youthful offender or been found guilty of a capital or life felony, who is not older than 24, and whose entire sentence is not longer than 10 years.[3]

Sentencing Options

If the court elects to sentence the defendant as a youthful offender there are four exclusive options available. The court may place the defendant on probation or community control, impose a period of incarceration up to 364 days as a condition of probation or community control, impose a split sentence of incarceration followed by probation or community control, or commit the offender to the custody of the Department of Corrections. Generally the total length

[1] Sections 958.011 and 958.021, F.S.
[2] Section 958.04(1), F.S.
[3] Section 958.11(4), F.S.

of sentence under any of these options may not exceed six years.[4]

BASIC TRAINING OR "BOOT CAMP"

History

In 1994, the Legislature authorized the creation of basic training programs for youthful offenders which were modeled after military boot camps. The programs were to last a minimum of 120 days and were to include marching drills, calisthenics, a strict dress code, manual labor, physical training, and obstacle courses. Training was also to be provided in decision making and personal development, along with educational opportunities, drug counseling, and rehabilitation programs. This was to be accomplished amid a strict disciplinary program in which the general inmate population privileges were restricted.[5]

The department bears the responsibility of determining which offenders might be good candidates for the basic training program. Because the program is physically demanding, the department is required to screen participants to make certain that a youthful offender does not have any physical limitations that would impair his or her participation in the strenuous activities of the program. Additionally, the prospective trainee may not have been imprisoned in a state or federal facility. The department must also review the offender's criminal history and assess the potential rehabilitative benefits of this form of "shock" incarceration. If these qualifications are met, the department must then seek permission from the sentencing court to place the offender in the basic training program. [6]

After Basic Training

When an offender successfully completes basic training, the department must notify the sentencing court and the court is then required to issue an order which modifies the original sentence and places the offender on probation. The offender is then expected to complete the terms of his or her probation.

LITIGATION ARISING FROM THE STATUTE

In 2000, the Second District Court of Appeal heard a case in which a youthful offender, Baron Bloodworth, appealed the sentence he received for violating the terms of his probation after completing basic training.[7] He was originally sentenced as a youthful offender to 6 years incarceration, 2 years suspended sentence in lieu of which he was to serve 2 years of probation. Upon successfully completing basic training Bloodworth was sentenced to probation which he violated. The trial court then sentenced him to 19.3 years' incarceration and he appealed. The appellate court reversed the trial court and determined that when ss. 958.04(2)(b) and 958.045(5)(c), F.S., are read together the plain meaning of the statute requires that the incarceration may not exceed 364 days.

The reasoning is that s. 958.045(5)(c), F.S., provides that "if the offender violates the conditions of probation, the court may revoke probation and impose any sentence that it might have originally imposed as a condition of probation." The other pertinent provision, s. 958.04(2)(b), F.S., states that a "court may impose a period of incarceration as a condition of probation or community control" that does not exceed 364 days "in a county facility, a department probation and restitution center, or a community residential facility." Accordingly, the court reasoned that the plain language of the statute leads to the conclusion that upon violating probation imposed after basic training, a youthful offender "may only receive up to 364 days in a specified facility as a penalty."[8]

The court further noted that the 1991 version of the statute did not limit the trial court as the 1997 version did to "any sentence that it might have imposed *as a condition of probation*." The court concluded its opinion by noting:

> The reason for this change in section 958.045(5)(c) is unknown to us, and our review of the legislative history of the statute provided no insight.[9]

In 2002, the First District Court of Appeal heard a similar violation of probation case.[10] The defendant, Colin Burkett, was originally sentenced to 22.35 months incarceration which was to be followed by 3 years of probation. However, the initial sentencing order provided that if the defendant completed boot camp, the probation would be reduced to only two years. Burkett did complete boot camp and the court modified the probationary period to two years.

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[4] Section 958.04, F.S.
[5] Section 958.045, F.S.
[6] Section 958.045(2), F.S.

[7] *Bloodworth v. State*, 769 So. 2d 1117, (Fla. 2d DCA 2000).
[8] *Id.*
[9] *Id* at p. 118.
[10] *Burkett v. State*, 816 So.2d 767 (Fla. 1st DCA 2002).

However, Burkett then violated his probation and the trial court sentenced him to five years of incarceration. The appellate court concluded that the sentence was illegal under *Bloodworth* and held that the trial court could only impose a sentence of no more than 364 days as a penalty.

Other sentences have been reversed throughout the state as courts have relied on the *Bloodworth* decision. Four years after the Second District Court of Appeal issued the *Bloodworth* decision it entertained another youthful offender appeal in *Blaxton*.[11] In reversing the trial court the appellate court concluded:

> The language of section 958.045(5)(c) may warrant further review by the legislature. We doubt that the legislature actually intended the result this language has created. We are inclined to believe that the legislature intended to permit the court to impose any sentence "that it might have originally imposed." Indeed, a judge may be hesitant to recommend boot camp in an effort to rehabilitate a youth if the judge realizes that the youth's sentence upon a future violation of probation will be limited to such a short term of incarceration. Nevertheless, the legislature has not amended the statutes since our opinion in *Bloodworth*…

Legislation was introduced in the 2005 Legislative Session to correct this problem. Senate Bill 646, which passed the Senate but not the House, proposed deleting the phrase "as a condition of probation" which would have given the sentencing courts the authority to impose any sentence originally available to the court if a defendant violates the terms of probation.

METHODOLOGY

Staff researched ss. 958.04 and 958.045(5)(c), F.S., the legislative history, amendments, and relevant cases construing those statutes to determine the severity of the problems in the statutes. Staff also developed a survey which was sent to the Department of Corrections, Bureau of Research and Data Analysis, requesting information on youthful offender and boot camp incarcerations. Surveys were also sent to the circuit court judges through the State Courts Administrator requesting that judges who had the most experience with the statute respond to the survey. Additional surveys were created and forwarded to the state attorneys and public defenders seeking their perceptions of problems within these statutes.

The Department of Corrections responded to the survey and supplied data on youthful offender sentencing for the years 2000 - 2004. The circuit court judges returned 55 surveys from 16 of the state's 20 judicial circuits. The state attorneys and public defenders disseminated surveys to their members through their associations who then responded to the committee staff.

FINDINGS

The following information was returned to the committee from the respondents.

DATA FROM THE DEPARTMENT OF CORRECTIONS

Admissions

The data below shows how many youthful offenders, not simply basic training participants, have been admitted to the Department of Corrections in recent years.

ADMISSION BY CIRCUIT AND DATE

Circuit (Judicial Circuit)	Admission Year					
	2000	2001	2002	2003	2004	Total
1	143	152	203	175	127	800
2	88	92	105	121	98	504
3	62	42	54	37	37	232
4	186	187	175	200	130	878
5	113	105	115	118	108	559
6	233	228	197	222	146	1,026
7	136	120	143	145	132	676
8	73	62	70	69	66	340
9	235	196	164	271	152	1,018
10	145	123	119	150	124	661
11	364	411	318	298	150	1,541
12	74	50	67	78	60	329
13	308	204	232	283	271	1,298
14	110	117	122	101	97	547
15	209	172	139	162	110	792
16	19	18	20	17	8	82
17	450	473	411	348	242	1,924
18	81	71	48	84	66	350
19	120	98	108	119	109	554
20	107	108	102	115	96	528
Missing	0	0	1	0	0	1
Total	3,256	3,029	2,913	3,113	2,329	14,640

[11] *Blaxton v. State*, 868 So.2d 620 (Fla. 2d DCA 2004).

Classifications

The table below distinguishes between youthful offenders (not simply basic training participants) who have been sentenced by the court and those who have been designated by the Department of Corrections. On average the department designates approximately twice as many offenders as the courts do.

Year Of Admission	YOUTHFUL OFFENDER CLASSIFICATION				Total
	Department Designated		Court Designated		
2000	2,260	69%	996	31%	3,256
2001	1,992	66%	1,037	34%	3,029
2002	1,827	63%	1,086	37%	2,913
2003	2,112	68%	1,001	32%	3,113
2004	1,666	72%	663	28%	2,329
Total	9,857	67%	4,783	33%	14,640

Facilities

Youthful Offenders are committed to any of the 10 youthful offender facilities in the state. Only two facilities house the basic training participants. The young women are placed at Lowell and the young men are sent to Sumter. As of June 2005, there were 75 male basic training participants and 5 female participants.

It should be noted that Bay, Manatee, Martin, Miami-Dade, Pinellas, and Polk counties operate their own boot camp facilities. These facilities are not under the authority or operation of the Department of Corrections.

YOUTHFUL OFFENDER LOCATIONS		
Location	**Frequency**	**Cumulative Frequency**
Lake City C.I.	893	893
Lancaster Work Camp	275	1168
Lancaster C.I.	523	1691
Sumter B.T.U.	75	1766
Brevard C.I.	886	2652
Lowell C.I.	69	2721
Hernando C.I.	419	3140
Brevard Work Camp	270	3410
Lowell C.I. - Boot Camp	5	3415
Indian River C.I.	397	3812

Graduates and Revocations

According to data supplied by the Department of Corrections, an average of 310 offenders are admitted to the boot camp program each year. Approximately 75, or 24 percent, of those fail and are removed from the program without successfully completing it.

Staff has concluded from the department's responses that, from the years 2000 – 2004, an average of 242 youthful offenders were graduated from basic training each year. Of that number, approximately 130 people, or 54 percent, then violate the terms of their probation and are sentenced to serve no longer than 364 days in a county jail.

RESPONSES FROM CIRCUIT JUDGES

The majority of the 55 circuit court judges who responded to the survey stated that this statute needs to be repaired to allow them to sentence the probation violators to a sentence longer than 364 days.

The following question was asked of the judges:

"Some people have expressed the concern that the sanction for violating probation needs to be amended to allow the courts greater leeway in imposing sentences on probation violators. Do you agree or disagree with this perspective?"

The following table provides the results:

Amend Statutes and Give Greater Discretion to Court		
Agree	53	96%
Disagree	2	4%
Total	55	100%

As a result of the district courts of appeal decisions, many judges refuse to sentence or permit the department to classify defendants into basic training knowing that if they violate their probation, they are rewarded with a very short sentence.

When asked what specific changes the judges would recommend to the statute, a wide variety of responses were returned. Again, the single most recurring response was to give the judges greater discretion in sentencing and eliminate the language which limits the sentence to the county jail option.

Curiously, one judicial circuit did not necessarily find that the statute was always a problem. They followed the authority of *Lee v. State.*[12] *Lee* held that when a youthful offender completed a county boot camp

[12] *Lee v. State*, 884 So2d 460 (Fla. 4th DCA 2004).

program as opposed to a state "boot camp" and then violated probation, the sentencing court's authority was not limited to the 364 day option. Accordingly, circuits that have a county operated boot camp where defendants are placed are not constrained by the sentencing statutes which apply to a state operated basic training facility.

In one question of the survey the judges were asked if the statute as currently construed, made them less likely to sentence a defendant as a youthful offender. Again, the majority of the responses were in the affirmative, ranging from "Absolutely" to "Yes." Some judges clarified their responses and noted that while they might continue to sentence defendants as youthful offenders, they would not sentence defendants to basic training programs given the limited sentence which could result if probation were violated. Only six judges answered that they were still likely to sentence under the statute as it is currently interpreted.

In concluding the survey, staff encouraged the circuit judges to offer any additional comments pertaining to the statute. Several expressed the sentiment that this is a good statute overall but for this critical deficiency. One noted that when a defendant violates his or her probation and is sentenced to the 364 day incarceration, that time is further reduced by any time previously served. The end result, noted the frustrated judge, was that the violating youthful offender received no sanction at all. Another judge commented that the restrictive nature of the statute had a chilling effect on state attorneys' willingness to permit sentencing under the statute because they knew that a defendant could violate probation and serve less time than if he or she completed probation.

A seasoned judge who has presided over an estimated 50 to 75 youthful offender cases stated:

> …I think the limitation described above should be eliminated. The reward for boot camp should be limited to an early release from incarceration and should not include a limitation on the judge's sentencing options if there is a violation of probation.

One judge who has sentenced 42 defendants as youthful offenders in 80 cases noted:

> The ones who receive youthful offender status should know and receive a stiffer sentence if they violate because they received such a tremendous break to begin with.

While expressing the positive aspects of the statute, another judge who has presided over 150 to 200 youthful offender sentencings noted:

> Youthful offender plus boot camp is [the] only viable prison program for young offenders that combines punishment (prison) with incentive (boot camp – early release) with training, and with supervision upon release from prison (probation or community control).

He recommended that the statute be amended to permit the court to impose any sentence it could have initially imposed upon a violation of probation or community control, regardless of whether the defendant has completed boot camp.

Perhaps the most enlightening comment was expressed by a judge who has handled hundreds of youthful offender cases:

> I sentenced a defendant to 364 days county jail on 8 separate cases. He successfully completed the boot camp and upon being placed on probation, failed to report. When contacted by DOC, he told the probation officer that he would not report since he could only receive 364 days county jail. This statute needs to be amended.

RESPONSES FROM STATE ATTORNEYS AND PUBLIC DEFENDERS

The responses provided by the state attorneys and public defenders through their associations seemed to represent the perspective from which they litigated. The state attorneys unanimously stated that the statute needed to be amended to permit violators to be sentenced more severely. The public defenders felt that no changes were needed to the statute. They reasoned that the county jail sentence would only apply to technical violations of probation and a new, more severe offense would result in the defendant being sentenced to a greater period of incarceration.

RECOMMENDATIONS

After reviewing the statutes, case law, and survey responses staff has concluded that a statute that was originally crafted to quickly rehabilitate youthful offenders is being neglected and often avoided. In order for the statute to be offered as a viable sentencing tool for the courts it should be amended.

Staff recommends that a committee bill be drafted to remove the language in s. 958.045(5)(c), F.S., which limits the trial court's discretion to sentence a youthful offender who violates the terms of his or her probation.