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Committee on Criminal Justice

YOUTHFUL OFFENDER DESIGNATION IN THE DEPARTMENT OF CORRECTIONS

Issue Description

The Florida Youthful Offender Act (Act), ss. 958.011 – 958.15, F.S., was passed in 1978 with the purpose of improving the chances of correction and successful reentry to the community of youthful offenders sentenced to prison. This report describes the Act and its implementation, assesses whether it has been effective in meeting its stated purposes, and recommends statutory changes that are warranted by the findings.

Background

History and Legislative Intent

The Florida Youthful Offender Act was adopted in 1978 in order to improve the possibility of rehabilitating and reintegrating young offenders into society by preventing their association with older, more experienced criminals in prison. The second purpose of the Act was to provide a sentencing alternative for courts in dealing with an offender who could no longer be safely treated as a juvenile and who required more restriction than could be provided by community supervision. Since the Act was originally passed, the legislative intent expressed in s. 958.021, F.S., has been expanded to include providing youthful offenders with enhanced vocational, educational, counseling, and public service opportunities, encouraging citizen volunteers to help the youthful offenders successfully reintegrate into the community, and requiring youthful offenders to participate in substance abuse and other types of counseling and programs.

Sentencing as a Youthful Offender by the Court

A court may sentence a defendant as a youthful offender if the defendant:

- Is at least 18 but less than 21 years of age at the time of sentencing, or is under 18 years of age but was prosecuted as an adult pursuant to chapter 985, F.S.;
- Has been found guilty of or has pled nolo contendere or guilty to a felony, unless he or she was found guilty of a capital or life felony; and
- Has not previously been classified as a youthful offender.¹

The court has four sentencing options for a youthful offender: incarceration for no more than 364 days in a county facility, department probation and restitution center, or community residential center as a condition of community supervision; community supervision; incarceration; or a split sentence of incarceration and community supervision. The total period of incarceration, community supervision, or a split sentence cannot be longer than six years or the maximum sentence for the offense if the maximum sentence is less than six years.²

Classification as a Youthful Offender by the Department of Corrections

A young person who is not sentenced as a youthful offender can still be classified and assigned as a youthful offender by the Department of Corrections (department). Chapter 958, F.S., requires the department to continuously screen all institutions, facilities, and programs for inmates who are less than 25 years old and who the department believes should be classified and assigned as a youthful offender:

¹ Section 958.04(1), F.S.

² Section 958.04, F.S.

- Section 958.045(8)(a), F.S., allows the department to designate an inmate who is less than 25 years old as a youthful offender if he or she met the eligibility criteria to be sentenced as a youthful offender by the court pursuant to s. 958.04, F.S., but was not.
- Section 958.11(4), F.S., allows designation of an inmate who is less than 25 years old as a youthful offender if the inmate was ineligible for youthful offender sentencing by the court only because he or she was more than 21 years old at the time of sentencing, and the total sentence does not exceed 10 years.

Special Provisions for Juveniles or Vulnerable Young Adults

Some younger inmates are assigned to youthful offender facilities even though they cannot be designated as a youthful offender. The department is required to assign an inmate who is less than 18 years old to a youthful offender facility even if he or she was not sentenced as a youthful offender. Such an inmate may continue to be assigned to the youthful offender facility until reaching 22 years of age if the department determines that it is in the inmate's best interests and that the assignment does not pose an unreasonable risk to other inmates in the facility.³ The department may also assign an inmate who is less than 20 years old, except a capital or life felon, to a youthful offender facility if it determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful offender facility.⁴ There is no provision for continued assignment of these inmates to a youthful offender institution once they turn 20 years old.

Youthful Offender Facilities

Section 958.11, F.S., requires the department to designate separate institutions and programs for youthful offenders and requires personnel be specially qualified by training and experience to operate the institutions and programs. Male youthful offenders who are 14 through 18 years old must be separated from those who are older than 19. Separate institutions exist for each age group.⁵ Female youthful offenders of all ages may be housed together due to the small numbers and lesser risk posed by combining age groups.⁶ Only youthful offenders can be in the designated institutions and programs, with the exception of select adult offenders who may be assigned to a youthful offender facility under special circumstances.⁷

Assignment of Youthful Offenders to Adult Facilities or Outside of Age Range

Section 958.11(3), F.S., limits the circumstances in which the department can assign a youthful offender to an adult facility. These are:

- Conviction of a new felony under Florida law;
- Commission of serious violations of department rules to the point that the youthful offender becomes a serious management or disciplinary problem and his or her presence would be detrimental to the interests of other youthful offenders and to the program;
- Need for medical treatment, health services, or other specialized treatment not available at the youthful offender facility; and
- Transfer outside of the state correctional system to receive services not provided by the department.

There are several scenarios in which a youthful offender may be assigned to a youthful offender facility that is outside of his or her age range. A youthful offender who is over 18 years old may be retained in a 14 to 18 year old facility to which originally assigned if the department determines that it is in the best interest of both the youthful offender and the department.⁸ Likewise, a youthful offender who was originally assigned to a facility designated for the 19-24 age group may be reassigned to a 14-18 year old age group facility if he is mentally or physically vulnerable with the older age group and the department determines that reassignment is necessary to

³ Section 944.1905(5)(a), F.S.

⁴ Section 958.11(6), F.S.

⁵ Section 958.11(1), F.S. However, 18 year old youthful offenders can be assigned to a facility for 19-24 year olds if facilities designed for 14 to 18 year olds exceeds 100 percent of lawful capacity.

⁶Section 958.11(2), F.S.

⁷ Section 958.11(2), F.S.

⁸ Section 958.11(3)(f), F.S.

protect his safety or the safety of the institution.⁹ On the other hand, a youthful offender can be moved up from a facility designated for the 14 to 18 year old age group to a facility for 19 to 24 year olds if he is disruptive, incorrigible, or uncontrollable and the department determines that the reassignment would be in his and the department's best interests.¹⁰

Statutory Guidelines for the Youthful Offender Program

Every youthful offender must have an educational assessment and a substance abuse assessment when admitted to the department. Offenders who have not obtained a high school diploma must be enrolled in an adult education program to help improve academic skills and to earn a high school diploma. The department must also assess the offender's prior vocational skills and provide future career education. Youthful offenders who are admitted to the basic training program described below must also have a full substance abuse assessment to determine the need for substance abuse treatment.¹¹

Section 958.12, F.S., requires youthful offenders to participate in work assignments and in rehabilitative programs. The offenders must also participate in reception and orientation; evaluation, needs assessment, and classification; academic or vocational programs; career and job training; life and socialization skills training, including anger and aggression control; prerelease orientation and planning; and transition (reentry) services. Reentry services are an important component of the youthful offender program because all will leave prison at relatively young ages and many had little experience with basic life skills when they came into prison.

The Act originally provided only general guidance as to the structure of the program for youthful offenders. However, in 1987 the Legislature specifically required the department to develop and operate a short-term basic training program for youthful offenders who might be deterred from further lawbreaking without a lengthy incarceration.¹² The court must approve placement in the basic training program, and successful completion results in modification of the sentence to a term of community supervision in place of the remaining term of imprisonment.

Findings and/or Conclusions

Methodology

Staff reviewed statutes, administrative rules and program manuals to learn about the program. Staff also met with department representatives and toured Lancaster Correctional Institutional, a male youthful offender facility. Data was obtained from the department and other sources. In addition, information was obtained and reviewed concerning youthful offender programs in other jurisdictions.

Implementation of the Youthful Offender Act

Youthful Offender Program Staff

Youthful offenders are a challenging group and present a unique mission to the department. Therefore, more training and special qualifications are required for correctional officers assigned to supervise youthful offenders. Before assuming their positions, all youthful offender correctional officers are required to complete a 40-hour course focused on supervision of the youthful offender. Additionally, all staff in the basic training programs and drill instructors at other youthful offender institutions are required to complete a 40-hour course on drill instruction. Basic training program staff must pass a physical fitness test every three months. In addition, wardens of youthful offender facilities are expected to select staff who will serve as role models to the youthful offender by their example and demeanor.¹³

⁹ Section 958.11(3)(g), F.S.

¹⁰ Section 958.11(3)(h), F.S.

¹¹ Section 958.045(4), F.S.

¹² Section 958.045(3), F.S.

¹³ Information obtained from a redacted version of the July 2010 revision of "Youthful Offenders and the Extended Day Program Technical Instruction Manual," Florida Department of Corrections.

Facilities

Youthful Offenders are committed to any of the 10 youthful offender facilities in the state. In addition, at any given time a small percentage are in-processing, at the hospital, or in work release centers.

YOUTHFUL OFFENDER LOCATIONS AND POPULATION AS OF JUNE 30, 2009 ¹⁴						
Location	Sex and Age of Youthful Offenders	DOC Designated		Court Designated		Total
		Number	%	Number	%	
Hernando CI	Females 19-24	106	84.1	20	15.9	126
Lowell CI	Females 24 and under	93	76.2	29	23.8	122
Lowell Annex	Females 24 and under	23	60.5	15	39.5	38
Lowell Boot Camp	Females 24 and under	7	70.0	3	30.0	10
Indian River CI	Males 14-18	276	58.4	197	41.6	473
Brevard CI	Males 19-24	628	63.2	366	36.8	994
Lake City CF ¹⁵	Males 19-24	638	71.0	261	29.0	899
Lancaster CI	Males 19-24	438	71.1	178	28.9	616
Lancaster Work Camp	Males 19-24	199	74.5	68	25.5	267
Sumter Basic Training Unit	Males 24 and under	38	49.4	39	49.6	77
Reception Centers		188	72.6	71	27.4	259
Reception Medical Center		132	79.0	35	21.0	167
Work Release Centers		108	67.5	52	32.5	160
Other Facilities		11	64.7	6	35.3	17
Total		2885	68.3	1340	31.7	4225

Programming

There are two programming tracks for incarcerated youthful offenders: the Basic Training Program (BTP) operated in accordance with s. 958.045, F.S., for youthful offenders approved to participate by the court, and the Extended Day Program (EDP) created by the department for all youthful offenders who are not assigned to the BTP. Although the BTP is the statutorily-mandated basic training program, the EDP also emphasizes rigorous discipline, physical training, and positive personal development.

- *Basic Training Program:* The BTP is a structured disciplinary program that lasts a minimum of 120 days and is based upon a military basic training model with marching drills, calisthenics, a strict dress code, manual labor, and physical training with obstacle courses. In addition, training is provided in decision making and personal development, along with the required general education development and adult basic education courses, drug counseling, and other rehabilitation programs.¹⁶ The basic training day begins at 4 a.m. and ends at 9 p.m. six days a week, with an extra hour of sleep allowed on Sunday. Successful completion of the program results in modification of the youthful offender's sentence to a term of community supervision in accordance with s. 958.045(5)(c), F.S. A BTP participant who fails the program is placed in the general youthful offender population unless he or she was decertified from youthful offender status based upon the statutory criteria discussed previously.

Candidates for the BTP are selected by the department from the entire youthful offender population and not only from those recommended by the courts. Candidates cannot be impaired, must be able to engage in strenuous physical activities, and have never been imprisoned in a state or federal facility. The department's selection

¹⁴ Department of Corrections Fiscal Year 2008-2009 Annual Report, page 57.

¹⁵ Lake City Correctional Facility is privately operated by Corrections Corporation of America.

¹⁶ Section 958.045, F.S.

process must also include review of the candidate's criminal history and assessment of the potential rehabilitative benefits of "shock" incarceration. If a youthful offender meets these qualifications and is selected for participation, the department must seek permission from the sentencing court to place him or her in the BTP.¹⁷ In addition, a department-designated youthful offender cannot participate in basic training unless he or she is eligible for control release, a restriction that does not apply to court-designated youthful offenders.¹⁸

The BTP for females is at CAMP Jones,¹⁹ a 28-bed facility near Lowell Correctional Institution. The male BTP is a 112-bed facility within Sumter Correctional Institution. Approximately two-thirds of the 1147 youthful offenders who entered the BTP during the five-year period from 2005 through 2009 completed the program and had the remainder of their sentence modified to community supervision.

- *Extended Day Program:* Only a small percentage of youthful offenders can take part in the basic training program, but the Legislature mandates that enhanced program services be provided to all youthful offenders. The EDP was created by the department to fulfill this mandate in a structured way. It is a regimented program that takes up 16 hours a day Monday through Saturday with work, academic and vocational counseling, personal development, and self-betterment programs. Sunday is used for religious services, visitation, parental support, and independent activities.²⁰

The EDP consists of 3 phases, with participants in each phase distinguished by the color of their cap:

- The Orange Cap phase is a two-week orientation to familiarize the youthful offender with what is expected of him or her. It is a basic training phase characterized by physical training, regimented discipline, and constant supervision. Inmate needs assessments are conducted during this phase so that programming can begin during the next phase. An Orange Cap must pass an evaluation on the orientation materials in order to advance to Phase II.
- *The Red Cap phase is the level in which the youthful offender begins to participate in vocational, academic, and betterment programs and assumes a standard work assignment. Rigid discipline and structured physical training continues six days a week, but Red Caps have less personal supervision than when in the orientation phase and they may also be allowed limited privileges. It takes at least 4 months to complete the Red Cap phase. Requirements for promotion to the next phase include having a good disciplinary and inspection record, making positive achievement in vocational or academic courses, enrolling in at least one personal achievement or substance abuse program, and demonstrating high regard for positive discipline and respect toward self, staff, and others. Promotion also requires appearance before a staff evaluation board at which the youthful offender must explain his or her personal self improvement plan to the board, including short and long term goals and how the goals will assist in improving areas of deficiency.*
- The Blue Cap phase is the final level of the Extended Day Program. A youthful offender who is promoted to Blue Cap status is a role model for other youthful offenders and is expected to be a positive example to his or her peers. Blue Caps are continuously evaluated to ensure that they are maintaining performance in responsibility, drill, work assignments, and education programs. Blue Caps can become peer facilitators and assist staff with certain activities, but only a few additional privileges are available to them. Approximately 241 youthful offenders are currently in Blue Cap status.

Youthful offenders who are disciplinary problems can be placed in a remedial program and required to wear a Yellow Cap. Yellow Caps receive additional training and supervision and privileges are limited to their basic

¹⁷ Section 958.045(2), F.S. The department's selection and the court's formal approval is required even if the court recommended that the youthful offender be placed in the BTP at sentencing. Also, the state attorney's office must be notified and have the opportunity to object to the request if the inmate was designated as a youthful offender by the department.

¹⁸ Control release is an administrative function solely used to manage the state prison population within total capacity that has not been used recently. The eligibility criteria for control release is set forth in s. 947.146, F.S.

¹⁹ CAMP is an acronym for Corrections Alternative Military Program.

²⁰ Technical Instruction Manual, supra.

needs. A youthful offender who is placed in Yellow Cap status must remain in the remedial program for a minimum of two weeks.

Lack of Incentives for Successful EDP Participants

The EDP is only “completed” when the youthful offender’s sentence ends or when he or she is transferred to an adult institution because of age. Since these events will occur regardless of whether the youthful offender is a highly-motivated Blue Cap or a marginal performer (perhaps even a perpetual Yellow Cap), the incentive to perform well is primarily derived from self-motivation and encouragement by staff.

Section 958.04(2)(d), F.S., allows the department to recommend that the sentencing court modify the sentence of a successful program participant.²¹ While this statute theoretically provides an incentive for Blue Caps, in reality only two sentences have been modified outside of the BTP system. The department has apparently stopped recommending sentence modifications for worthy EDP participants because of the lack of past success in obtaining sentence modifications. It is unclear why judges have not been receptive, but it may stem from a lack of information about the additional programming and the level of discipline that is required to successfully participate in the EDP for an extended period of time.

Demographics

As shown by the data below, the number of inmates designated as youthful offenders has declined by 17 percent since 2000. Department designations have declined by 10.9 percent since 2000 while court sentences have declined by 30.1 percent. However, during the last two years for which data is available, both court sentences and department designations have rebounded by approximately 12 percent. The proportion of department-designated to court-sentenced youthful offenders has increased moderately since 2000, but has remained near a 3:1 ratio for the past five years.

YOUTHFUL OFFENDER ADMISSION BY CALENDAR YEAR					
Year of Admission	Court Sentenced		DOC Designated		Total
	Number	%	Number	%	
2000	996	30.7	2246	69.3	3242
2005	577	26.0	1644	74.0	2221
2006	525	22.8	1776	77.2	2301
2007	483	21.3	1780	78.7	2263
2008	622	26.0	1771	74.0	2393
2009	696	25.8	2001	74.2	2697

The data in the table below shows how many youthful offenders have been admitted to the Department of Corrections in recent years from each of the state’s judicial circuits.²² These include both those who are sentenced as youthful offenders and those who are department-designated.

YOUTHFUL OFFENDERS ADMISSIONS BY CIRCUIT (CALENDAR YEAR)						
Circuit	2000	2005	2006	2007	2008	2009
1	143	111	124	105	138	155
2	88	82	107	110	86	87
3	62	51	42	43	50	54
4	186	169	169	154	178	341
5	113	151	168	187	162	167
6	233	130	128	199	214	185
7	136	106	93	115	112	121

²¹ This provision can only apply to EDP participants because sentence modification for BTP completion is pre-approved in accordance with s. 958.045, F.S.

²² Staff could not determine why the totals in this table and the previous table are slightly different, but the difference (no more than 12) does not affect the observations.

YOUTHFUL OFFENDERS ADMISSIONS BY CIRCUIT (CALENDAR YEAR)						
Circuit	2000	2005	2006	2007	2008	2009
8	73	90	97	80	80	92
9	235	137	125	150	161	191
10	145	160	152	157	123	121
11	364	118	121	71	110	121
12	74	51	37	47	69	74
13	308	232	297	274	226	237
14	110	82	102	111	105	94
15	209	113	118	111	164	174
16	19	8	6	8	8	4
17	450	179	186	144	186	183
18	81	63	62	58	56	90
19	120	104	94	72	77	99
20	107	86	78	73	95	115
Total	3256	2224	2306	2269	2400	2705

The data reflect that while admissions from most of the circuits remained relatively steady, the 4th Circuit (Duval, Clay, and Nassau Counties) had a significant increase from 2000 to 2009. Conversely, a dramatic decrease in admissions can be observed for the 11th (Miami-Dade County) and 17th (Broward County) Circuits between 2000 and 2005, with relatively steady admissions since that time. While the cause of these changes has not been determined, in general several conditions could underlie such changes. These include changes in the number of juveniles being tried as adults; a reduction or increase in sentences to community supervision without incarceration; or increases or reductions of admissions to diversion programs such as drug courts.

Recidivism

The department reports that the overall 36-month recidivism rate for inmates released from 2001 to 2008 is 33.1 percent. Inmates who are under 25 years old at the time of release have the highest recidivism rate of any age group, exceeding 36 percent recidivism after 36 months and reaching beyond 50 percent before 5 years elapse.²³ The department recently calculated the three year recidivism rates for male youthful offenders released from 2001 to 2008 who either successfully completed the Basic Training Program or attained Blue Cap status in the Extended Day Program. The data reflected that the youthful offenders who had achieved Blue Cap status prior to release have a recidivism rate that is approximately 5 percentage points lower than the youthful offenders who graduated from the Basic Training Program at Sumter Correctional Institution. Also, the Blue Cap group showed an increased likelihood of participation in vocational and GED programs.

The better recidivism results for successful Extended Day Program participants are counterintuitive because Basic Training Program participants are specifically selected for the likelihood that a short, intense incarceration would deter future lawbreaking. However, it appears that the Extended Day Program's lengthier time creates more opportunity to participate in educational and betterment programs that contribute to successful re-entry into the community.

Options and/or Recommendations

Staff recommends that Chapter 958, F.S., be amended to create a viable reward for successful participation in the Extended Day Program and to provide an alternative to transfer of a youthful offender to adult prison because of age if the rehabilitation goals of the youthful offender program have been met.

²³ 2009 Florida Prison Recidivism Study Releases From 2001 to 2008, Florida Department of Corrections Bureau of Research and Data Analysis, May 2010, p. 11.

- The Extended Day Program should be specifically described in statute so that it has more visibility than simply being an unnamed and loosely described program for youthful offenders who are not placed in the Basic Training Program.
- The department should be clearly authorized to recommend, and the courts encouraged to grant, sentence modification for youthful offenders who successfully participate in the Extended Day Program as evidenced by reaching and maintaining Blue Cap Status. The total required time in the program should be long enough to allow for more programming and opportunity to observe behavior than the 120-day Basic Training Program.

Staff also recommends that consideration should be given to repealing s. 958.045(8)(b), F.S., that makes department-designated youthful offenders ineligible to participate in the Basic Training Program unless they meet the requirements for Control Release. This is an unnecessary and illogical requirement since participation in the BTP must be court-approved prior to the youthful offender's entry into the program.

Chapter 958, F.S., has been amended many times and as a result includes redundant and obsolete material. In addition, some material is placed in illogical position with relation to the rest of the chapter. Staff recommends that the chapter be reorganized and that redundant and obsolete material be removed.