

BILL SUMMARY
2nd Session of the 58th Legislature

Bill No.:	SB217
Version:	FA1
Request Number:	
Author:	Rep. Howard and Sen. Moore
Date:	3/31/2022
Impact:	No impact

Research Analysis

FA1 to SB217 adds Section 13 to the measure which requires the Governor to attend and appear in person at all Stage Two Commutation Hearings held by the Pardon and Parole Board. The amendment also requires the Governor to provide their signature on every document while reviewing recommendations for commutation submitted by the Pardon and Parole Board. Before approving or denying the recommendation for commutation, the Governor will personally meet with the victim or a representative to discuss the criminal case, victim impact statements, or letters of protest previously submitted to the Pardon and Parole Board. The amendment prohibits the Pardon and Parole Board from submitting recommendations for commutation for persons who have been sentenced to death.

SB217 modifies the provisions of the Youthful Offender Act. The measure updates the effective date for the state shall not base the timing of the filing of any charges solely on the applicability of the Youthful Offender Act. The measure also adds definitions of "certification as an adult," "certification as a juvenile," "certification study," and "juvenile delinquent." The measure declares that is intent of the Legislature to use the Youthful Offender Act to protect the public while rehabilitating and holding youth accountable for serious crimes. The measure also declares that eligible 17-year olds should have the opportunity to be processed as youthful offenders as provided by law and held accountable through the provisions of the Youthful Offender Act for custody, institutional placement, supervision, extended jurisdiction within the Office of Juvenile Affairs (OJA), and the ability to transfer youthful offenders to the Department of Corrections when incarceration or additional supervision is required beyond the maximum age allowed in the OJA. The measure provides that no older youths should be denied such placement if the youth is 17 years old or younger and directs persons above the age of 18 to be placed in the custody of the Department of Corrections. When a court determines that a youthful offender has successfully completed their treatment and rehabilitation plan and discharged by the court, their records may be sealed. If a court orders a certification study, the district attorney or the youth's attorney shall provide information to OJA within five business days of the order issuance. A child will be tried in a juvenile proceeding unless previously adjudicated as a youthful offender or sentenced as an adult. If a person commits a crime as a youth, but the crime was not reported or did not become known to the district attorney or law enforcement until the person reached 18 or they are not apprehended until they are 18, the person shall be tried as an adult. An individual may be charged as a juvenile delinquent, youthful offender, or an adult. The measure adds a list of offenses for which an individual aged 15, 16, or 17 shall be held accountable as a youthful offender. Any 15, 16, or 17 year old who is charged with rape in the first degree or attempt thereof may be held accountable as an adult or as a youthful offender at the sole discretion of the district attorney. Any person 16 or 17 years old who is charged with crimes listed in statute may be held accountable for such acts as a youthful offender; provided, the person may be certified as a juvenile or as an adult. The attorney may refile or elect to file a petition alleging the individual as a delinquent. The requirement for the preliminary hearing to be held within 90 days may be

waived by the accused. If the preliminary hearing is not commenced within 90 days, the district attorney will be prohibited from seeking an adult sentence unless the accused waived the requirement. The accused also waives their right to have the preliminary hearing commence within 90 days if they fail to cooperate with providing information in locating their parent, guardian, or next friend for notice.

The measure provides that when the representative of the offender believes that there is good cause that the offender should be charged as a juvenile, the representative shall file a motion for certification as a juvenile. The motion for certification as a juvenile shall be filed prior to the preliminary hearing. The court shall order a certification study of the offender upon receiving the motion. The court shall order the parent or guardian of the offender to pay a fee of not less than \$100.00 and not more than \$1,000.00 to conduct the study. The measure outlines the guidelines for the court to consider. The district attorney may impose an adult sentence on a certified juvenile if there is good cause to believe that the person charged as a youthful offender would not reasonably complete a plan of rehabilitation or the public would not be adequately protected if the person were to be sentenced as a youthful offender. The measure outlines the procedure for the district attorney to charge the offender as an adult. After consideration of the evidence and argument, the court shall impose a sentence, which may encompass the same range of punishment as an adult except for capital offenses. Any sentence may be served in OJA supervision or custody until the sentence's expiration, the youthful offender is discharged, or they are transferred to DOC custody or supervision. OJA must prepare and file the written rehabilitation plan within 30 days of receiving notification of the placement. The court must schedule a youthful offender review hearing no less than every six months. The court shall also hold a hearing 30 days prior to the individual's 18th birthday (and then 30 days before 18 years and six months) if the youthful offender is still under OJA custody or supervision. At OJA recommendation, the court may extend the youthful offender's custody or supervision to 19 to allow them to complete the reintegration phase or their treatment program or community supervision. Specific actions are outlined in the measure. If authorized by the court, any hearing may be conducted as a virtual hearing or through telephonic communications. Whenever a district attorney or OJA believes that a youthful offender should be transferred to Department of Corrections custody, they may file a motion and the court will set a motion for hearing. The measure outlines the guidelines for the court to consider. The court shall not prohibit the reintegration of the youthful offender into the community unless they find the youthful offender has not completed the required steps in the rehabilitation plan or that the public would not be adequately protected. The measure also repeals 10A OS. 21, Sections [2-5-206](#), [2-5-207](#), [2-5-208](#), [2-5-209](#), and [2-5-210](#).

Prepared By: Suzie Nahach

Fiscal Analysis

After review, the FA1 to SB 217 has no anticipated fiscal considerations to the state.

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Other Considerations

None.

