

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 5 Juvenile Offenders

SPONSOR(S): Criminal Justice Subcommittee; Weinstein and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	6 Y, 5 N, As CS	Krol	Cunningham
2) Judiciary Committee	15 Y, 2 N	Krol	Havlicak

SUMMARY ANALYSIS

In 2010, the United States Supreme Court held that the 8th Amendment of the U.S. Constitution prohibits states from sentencing juvenile nonhomicide offenders to life without providing a meaningful opportunity to obtain release.

The bill creates a new section of statute entitled, "juvenile offender; eligibility." The bill provides that a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible for resentencing after serving 25 years incarceration and meeting specified criteria.

The Criminal Justice Impact Conference met on December 14, 2011, and determined that the bill would have insignificant savings to the Department of Corrections. See "fiscal section."

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Graham v. Florida

In 2010, the United States Supreme Court held that the 8th Amendment of the U.S. Constitution¹ prohibits states from sentencing juvenile nonhomicide offenders to life without providing a meaningful opportunity to obtain release.² The case was *Graham v. Florida*, which originated from crimes committed in Jacksonville.³ The Court's opinion stated:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.⁴

Post-Graham Decision

Subsequent to the *Graham* decision, inmates who were convicted of nonhomicide offenses and sentenced to life imprisonment began petitioning for and receiving resentencing hearings. There appears to be no consolidated source for obtaining the results of these resentencing hearings.

However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was seventeen years old was resentenced to a split sentence of 7 years in prison followed by 20 years of probation.⁵
- An inmate sentenced to four life sentences for armed robberies committed in 2004 and 2005 when he was 14 and 15 years old was resentenced to a term of 30 years.⁶
- An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years.⁷

In addition to resentencing hearings, juvenile offenders convicted after *Graham* was issued are appealing lengthy prison sentences as a violation of the *Graham* decision on the grounds that they effectively constitute a life sentence. Two recent Florida 1st District Court of Appeal cases have held that a 70-year and 50-year prison sentence were not the functional equivalent of a life sentence for the purposes of *Graham*.⁸

Effect of the Bill

The bill creates a new section of statute entitled, "juvenile offender; eligibility." The bill provides that a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible for resentencing.

¹ The 8th Amendment of the U.S. Constitution forbids the government from imposing cruel and unusual punishment.

² *Graham v. Florida*, 130 S.Ct. 2011 (2010).

³ *Id.*

⁴ *Graham v. Florida*, 130 S.Ct. at 2016.

⁵ "Rapist who was serving life sentence will get second chance," August 30, 2011, <http://www2.tbo.com/news/breaking-news/2011/aug/30/3/rapist-who-was-serving-life-resentenced-to-seven-y-ar-254096/> (last visited on January 24, 2012).

⁶ "Man who served 11 years fails to persuade Hillsborough judge to set him free," October 6, 2011, <http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464> (last visited on January 24, 2012).

⁷ "Teenage rapist Jose Walle resentenced to 65 years in prison," November 18, 2010, <http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-re-sentenced-to-65-years-in-prison/1134862> (last visited on January 24, 2012).

⁸ See *Gridine v. State*, 2011 WL 6849649 (Fla. App. 1st DCA 2011); *Thomas v. State*, 2011 WL 6847814 (Fla. App. 1st DCA 2011).

The bill defines:

- “Juvenile offender” as an offender who was less than 18 years of age at the time the nonhomicide offense was committed.
- “Nonhomicide offense” as an offense that did not result in the death of a human being.

The bill requires the Department of Corrections (DOC) to screen juvenile offenders committed to the DOC for eligibility criteria to participate in a resentencing hearing. Before a juvenile offender may be eligible for resentencing, he or she must serve 25 years imprisonment for the offense for which he or she seeks resentencing and must not have received any approved disciplinary reports for at least 3 years prior to the scheduled resentencing hearing.

If the juvenile offender meets the eligibility criteria, DOC must request the court of original jurisdiction to hold a resentencing hearing for that offender. In determining whether the juvenile offender has demonstrated maturity and reform and whether he or she should be resentenced, the bill requires the sentencing court to consider all of the following:

- Whether the juvenile offender remains at the same level of risk to society as he or she had at the time of the initial sentencing.
- The wishes of the victim or the opinions of the victim's next of kin. The absence of the victim or victim's next of kin from the resentencing hearing may not be a factor in the court's determination.
- Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or domination of another person.
- Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.
- Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected her or his behavior.
- Whether the juvenile offender, while in the custody of DOC, has aided inmates suffering from catastrophic or terminal medical, mental, or physical conditions or has prevented risk or injury to staff, citizens, or other inmates.
- Whether the juvenile offender has successfully completed any General Educational Development or other educational, technical, work, vocational, or self-rehabilitation program.
- Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before she or he committed the offense.
- The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender.
- The facts and circumstances of the offense for which the life sentence was imposed including the severity of the offense.
- Any factor that the sentencing court may have taken into account at the initial sentencing hearing in relation to all other considerations which may be relevant to the court's decision.

The bill requires the court to modify the juvenile offender's sentence and place the offender on probation for at least 5 years if the court determines at the resentencing hearing that the offender can reasonably be believed to be fit to reenter society. If the juvenile offender violates the conditions of his or her probation, the court may revoke probation and impose any sentence that it might have originally imposed. After a violation, the juvenile offender is no longer eligible for resentencing hearings.

The bill provides that if the juvenile offender is not resentenced after the initial resentencing hearing, he or she is eligible for a resentencing hearing 7 years after the date of the denial of resentencing and every 7 years thereafter.

B. SECTION DIRECTORY:

Section 1. Cites the act as the “Graham Compliance Act.”

Section 2. Creates a new section of statute relating to juvenile offender; resentencing.

Section 3. Provides the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on December 14, 2011, and determined that the bill would have insignificant savings to the Department of Corrections.⁹

The Department of Corrections (DOC) reports that any fiscal impact would be positive but indeterminate because any releases resulting from this bill will be at the discretion of the sentencing court.¹⁰ In addition, the pool of inmates that might be impacted by the bill indicates that the effect on DOC will be negligible.¹¹ DOC states that there are currently 219 inmates in custody who meet the age and life sentence criteria for consideration under the bill. Of these, 10 have served 25 years and another 2 are within one year of serving 25 years. Of these 12, only 5 meet the criteria of no disciplinary report within 3 years.¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

⁹ Criminal Justice Impact Conference. http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC_12.xls (last visited February 2, 2012).

¹⁰ Department of Corrections. 2012 Analysis of HB 5.

¹¹ *Id.*

¹² *Id.*

B. RULE-MAKING AUTHORITY:

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.¹³ Rulemaking authority is delegated by the Legislature¹⁴ through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”¹⁵ a rule. Agencies do not have discretion whether to engage in rulemaking.¹⁶ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.¹⁷ The grant of rulemaking authority itself need not be detailed.¹⁸ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.¹⁹

Generally, rulemaking authority is given to the Department of Corrections (DOC) in situations where DOC is required to select inmates for programs using specified statutory criteria.²⁰ While the bill requires to DOC to select juvenile offenders for resentencing using specified criteria, it does not provide DOC with rulemaking authority to implement administrative rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the parole process from the bill.
- Provides a resentencing process by which juvenile offenders may be resentenced if certain criteria are met.
- Requires the court to place a resentenced juvenile on probation for at least 5 years.
- Provides that the court may revoke probation and impose any sentence that it might have originally imposed if a juvenile offender violates his or her conditions of probation. After a violation, the offender may not be able to be resentenced under this section.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

¹³ Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So.2d 527, 530 (Fla. 1st DCA 2007).

¹⁴ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1st DCA 2000).

¹⁵ Section 120.52(17), F.S.

¹⁶ Section 120.54(1)(a), F.S.

¹⁷ Sections 120.52(8) and 120.536(1), F.S.

¹⁸ *Supra Save the Manatee Club, Inc.*, at 599.

¹⁹ *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So.2d 696, 704 (Fla. 1st DCA 2001).

²⁰ *See, e.g.*, ss. 945.73 and 958.045, F.S., related to inmate training program operation and youthful offender basic training program, respectively.