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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2013	.	
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Appropriations Subcommittee on Criminal and Civil Justice  
(Joyner) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (1) and (3) of section 775.082,  
Florida Statutes, are amended to read:

775.082 Penalties; applicability of sentencing structures;  
mandatory minimum sentences for certain reoffenders previously  
released from prison.—

(1) (a) Except as provided in paragraph (b), a person who  
has been convicted of a capital felony shall be punished by  
death if the proceeding held to determine sentence according to



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13 the procedure set forth in s. 921.141 results in findings by the  
14 court that such person shall be punished by death, otherwise  
15 such person shall be punished by life imprisonment and shall be  
16 ineligible for parole.

17 (b) A person who is convicted under s. 782.04 for an  
18 offense that was committed before the person was 18 years of age  
19 may be punished by life imprisonment if the judge at a mandatory  
20 sentencing hearing concludes that life imprisonment is an  
21 appropriate sentence.

22 1. In determining whether life imprisonment is an  
23 appropriate sentence, the judge shall consider factors relevant  
24 to the offense and to the defendant's youth and attendant  
25 circumstances, including, but not limited to:

26 a. The effect of the crime on the victim's family and on  
27 the community.

28 b. The nature and circumstances of the offense committed by  
29 the defendant.

30 c. The defendant's age, maturity, intellectual capacity,  
31 and mental and emotional health at the time of the offense.

32 d. The defendant's background, including his or her family,  
33 home, and community environment.

34 e. The effect, if any, of immaturity, impetuosity, or  
35 failure to appreciate risks and consequences on the defendant's  
36 participation in the offense.

37 f. The extent of the defendant's participation in the  
38 offense.

39 g. The effect, if any, of familial pressure or peer  
40 pressure on the defendant's actions.

41 h. The nature and extent of the defendant's prior criminal



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42 history.

43 i. The effect, if any, of characteristics attributable to  
44 the defendant's youth on the defendant's judgment.

45 j. The defendant's capacity for rehabilitation.

46 2. If the judge concludes that life imprisonment is not an  
47 appropriate sentence, the defendant shall be punished by  
48 imprisonment for a term of not less than 50 years.

49 3. A person who is sentenced under this paragraph shall  
50 have his or her sentence reviewed after 25 years. The sentencing  
51 court shall retain original jurisdiction for the duration of the  
52 sentence for this purpose.

53 a. The Department of Corrections shall notify juvenile  
54 offenders who are committed to the department of their  
55 eligibility to participate in a resentencing hearing 18 months  
56 before the beginning of their 25th year of incarceration. The  
57 juvenile offender may apply to the court of original  
58 jurisdiction requesting that a resentencing hearing be held.

59 b. The court shall hold a resentencing hearing to determine  
60 whether the juvenile offender's sentence should be modified. The  
61 resentencing court shall consider all of the following:

62 (I) Whether the juvenile offender demonstrates maturity and  
63 rehabilitation.

64 (II) Whether the juvenile offender remains at the same  
65 level of risk to society as he or she did at the time of the  
66 initial sentencing.

67 (III) The opinion of the victim's next of kin. The absence  
68 of the victim's next of kin from the resentencing hearing may  
69 not be a factor in the courts determination under this section.

70 (IV) Whether the juvenile offender was a relatively minor



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71 participant in the criminal offense or acted under extreme  
72 duress or the domination of another person.

73 (V) Whether the juvenile has shown sincere and sustained  
74 remorse for the criminal offense.

75 (VI) Whether the juvenile offender's age, maturity, and  
76 psychological development at the time of the offense affected  
77 his or her behavior.

78 (VII) Whether the juvenile offender has successfully  
79 obtained a general educational development certificate or  
80 completed another educational, technical, work, vocational, or  
81 self-rehabilitation program.

82 (VIII) Whether the juvenile offender was a victim of  
83 sexual, physical, or emotional abuse before he or she committed  
84 the offense.

85 (IX) The results of any mental health assessment, risk  
86 assessment, or evaluation of the juvenile offender as to  
87 rehabilitation.

88 c. A juvenile offender is entitled to be represented by  
89 counsel at the resentencing hearing and the court shall appoint  
90 a public defender to represent the juvenile offender if the  
91 juvenile cannot afford an attorney.

92 d. If the court determines at the resentencing hearing that  
93 the juvenile offender has been rehabilitated and is reasonably  
94 believed to be fit to reenter society based on the factors in  
95 sub-subparagraph b., the court shall impose a term of probation  
96 of at least 5 years. If the court determines that the juvenile  
97 offender has not demonstrated rehabilitation and is not fit to  
98 reenter society based on the factors in sub-subparagraph b., the  
99 court shall not modify the juvenile offender's sentence and



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100 shall issue a written order stating the reasons therefore.

101 e. A juvenile offender who is not resentenced under this  
102 subparagraph at his or her initial resentencing hearing is  
103 eligible for a resentencing hearing every 5 years after the date  
104 of the denial and every 5 years thereafter.

105 4. This paragraph shall apply retroactively to the extent  
106 necessary to meet constitutional requirements for imposing a  
107 life sentence on a defendant who is convicted of committing a  
108 murder that occurred before the defendant was 18 years of age as  
109 set forth by the United States Supreme Court in *Miller v.*  
110 *Alabama*, 132 S. Ct. 2455 (2012).

111 (3) A person who has been convicted of any other designated  
112 felony may be punished as follows:

113 (a)1. For a life felony committed before ~~prior to~~ October  
114 1, 1983, by a term of imprisonment for life or for a term of  
115 years not less than 30.

116 2. For a life felony committed on or after October 1, 1983,  
117 by a term of imprisonment for life or by a term of imprisonment  
118 not exceeding 40 years.

119 3. Except as provided in subparagraph 4., for a life felony  
120 committed on or after July 1, 1995, by a term of imprisonment  
121 for life or by imprisonment for a term of years not exceeding  
122 life imprisonment.

123 4.a. Except as provided in sub-subparagraph b., for a life  
124 felony committed on or after September 1, 2005, which is a  
125 violation of s. 800.04(5)(b), by:

126 (I) A term of imprisonment for life; or

127 (II) A split sentence that is a term of not less than 25  
128 years' imprisonment and not exceeding life imprisonment,



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129 followed by probation or community control for the remainder of  
130 the person's natural life, as provided in s. 948.012(4).

131 b. For a life felony committed on or after July 1, 2008,  
132 which is a person's second or subsequent violation of s.  
133 800.04(5)(b), by a term of imprisonment for life.

134 5. A person convicted of a life felony or an offense  
135 punishable by a term of years not exceeding life imprisonment,  
136 other than an offense listed in 782.04, or an offense, other  
137 than offense listed in 782.04 that was reclassified as a life  
138 felony or an offense punishable by a term of years not exceeding  
139 life, that was committed before the person was 18 years of age  
140 shall be punished by a term of imprisonment not to exceed 50  
141 years.

142 a. A person sentenced under this subparagraph shall have  
143 his or her sentence reviewed after 15 years. The sentencing  
144 court shall retain original jurisdiction for the duration of the  
145 sentence for this purpose.

146 (I) The Department of Corrections shall notify juvenile  
147 offenders who are committed to the department of their  
148 eligibility to participate in a resentencing hearing 18 months  
149 before the beginning of their 15th year of incarceration. The  
150 juvenile offender may apply to the court of original  
151 jurisdiction requesting that a resentencing hearing be held.  
152 This subparagraph does not apply to juveniles sentenced to a  
153 term of 15 years or less.

154 (II) The court shall hold a resentencing hearing to  
155 determine whether the juvenile offender's sentence should be  
156 modified. The resentencing court shall consider all of the  
157 following:



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158       (A) Whether the juvenile offender demonstrates maturity and  
159 rehabilitation.

160       (B) Whether the juvenile offender remains at the same level  
161 of risk to society as he or she did at the time of the initial  
162 sentencing.

163       (C) The opinion of the victim or the victim,'s next of kin.  
164 The absence of the victim or the victim's next of kin from the  
165 resentencing hearing may not be a factor in the court's  
166 determination under this section.

167       (D) Whether the juvenile offender was a relatively minor  
168 participant in the criminal offense or acted under extreme  
169 duress or the domination of another person.

170       (E) Whether the juvenile has shown sincere and sustained  
171 remorse for the criminal offense.

172       (F) Whether the juvenile offender's age, maturity, and  
173 psychological development at the time of the offense affected  
174 his or her behavior.

175       (G) Whether the juvenile offender has successfully obtained  
176 a general educational development certificate or completed  
177 another educational, technical, work, vocational, or self-  
178 rehabilitation program.

179       (H) Whether the juvenile offender was a victim of sexual,  
180 physical, or emotional abuse before he or she committed the  
181 offense.

182       (I) The results of any mental health assessment, risk  
183 assessment, or evaluation of the juvenile offender as to  
184 rehabilitation.

185       (III) A juvenile offender is entitled to be represented by  
186 counsel, and the court shall appoint a public defender to



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187 represent the juvenile offender if the juvenile offender cannot  
188 afford an attorney.

189 (IV) If the court determines at the resentencing hearing  
190 that the juvenile offender has been rehabilitated and is  
191 reasonably believed to be fit to reenter society based on these  
192 factors, then a term of probation of at least 5 years, shall be  
193 imposed. If the court determines that the juvenile offender has  
194 not demonstrated rehabilitation and is not fit to reenter  
195 society based on these factors, the court shall not modify the  
196 juvenile offender's sentence and shall issue a written order  
197 stating the reasons therefore.

198 (V) A juvenile offender who is not resentenced under this  
199 paragraph at the initial resentencing hearing is eligible for a  
200 resentencing hearing 5 years after the date of the denial and  
201 every 5 years after that.

202 b. This subparagraph shall apply retroactively to the  
203 extent necessary to meet constitutional requirements as set  
204 forth by the United States Supreme Court in Graham v. Florida,  
205 560 US. (2010).

206 (b) For a felony of the first degree, by a term of  
207 imprisonment not exceeding 30 years or, when specifically  
208 provided by statute, by imprisonment for a term of years not  
209 exceeding life imprisonment.

210 (c) For a felony of the second degree, by a term of  
211 imprisonment not exceeding 15 years.

212 (d) For a felony of the third degree, by a term of  
213 imprisonment not exceeding 5 years.

214 Section 2. This act shall take effect July 1, 2013.

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216 ===== T I T L E A M E N D M E N T =====

217 And the title is amended as follows:

218 Delete everything before the enacting clause

219 and insert:

220 A bill to be entitled

221 An act relating to criminal penalties; amending s.  
222 775.082, F.S.; providing criminal sentences applicable  
223 to a person who was under the age of 18 years at the  
224 time certain offenses were committed; requiring that a  
225 judge consider certain factors before determining if  
226 life imprisonment is an appropriate sentence;  
227 providing for an alternative sentence if a sentence of  
228 life imprisonment is inappropriate; establishing right  
229 to resentencing hearing; specifying components of  
230 resentencing hearing process; providing for  
231 retroactive application to comply with constitutional  
232 requirements; providing an effective date.