



## II. Present Situation:

In recent years, the U.S. Supreme Court has issued several opinions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment in relation to the punishment of juvenile offenders.<sup>1</sup> The first of these was *Roper v. Simmons*, 543 U. S. 551 (2005), in which the Court found that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded constitutional doctrine regarding punishment of juvenile offenders in *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

### **Graham v. Florida**

In *Graham*, the Court held that a juvenile offender cannot be sentenced to life in prison without the possibility of parole for any offense other than a homicide. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must "provide him or her with some realistic opportunity to obtain release before the end of that term."<sup>2</sup> Because Florida has abolished parole<sup>3</sup> and the Court deems the possibility of executive clemency to be remote,<sup>4</sup> currently a juvenile offender in Florida cannot be given a life sentence for a non-homicide offense.

*Graham* applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.<sup>5</sup> Therefore, any juvenile offender serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

The Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. This has led to different results among the circuits in reviewing sentences for a lengthy term of years. The First Circuit Court of Appeals recognizes that a lengthy term of years is a *de facto* life sentence if it exceeds the juvenile offender's life expectancy.<sup>6</sup> On the other hand, the Fourth and

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<sup>1</sup> The term "juvenile offender" refers to an offender who was under 18 years of age at the time of committing the offense for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.

<sup>2</sup> See *Graham* at 2034

<sup>3</sup> Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.

<sup>4</sup> *Graham* at 2027

<sup>5</sup> See, e.g.,

<sup>6</sup> *Adams v. State*, --- So.3d ---, 37 Fla.L.Weekly D1865 (Fla. 1<sup>st</sup> DCA 2012). The First District Court of Appeals has struck down sentences of 60 years (*Adams*) and 80 years (*Floyd v. State*, 87 So.3d 45 (Fla. 1<sup>st</sup> DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So.3d 644 (Fla. 1<sup>st</sup> DCA 2011)) and 70 years (*Gridine v. State*, 89 So.3d 909 (Fla. 1<sup>st</sup> DCA 2011)).

Fifth Circuit Courts of Appeal have strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.<sup>7</sup>

### **Miller v. Alabama**

In *Miller*, the Court held that juvenile offenders who commit homicide cannot be sentenced to life in prison without the possibility of parole as the result of a mandatory sentencing scheme. The Court did not find that the Eighth Amendment prohibits sentencing a juvenile murderer to life without parole, but rather that individualized consideration of factors related to the offender's age must be considered before a life without parole sentence can be imposed. The Court also indicated that it expects that few juvenile offenders will be found to merit life without parole sentences.

Section 775.082, F.S., provides that the only permissible punishments for a capital offense are the death penalty or life imprisonment. As the result of the Court's holdings in *Roper* (invalidating the death penalty for juvenile offenders) and *Miller*, there is currently no statutory punishment for a juvenile who commits capital murder.

The majority opinion in *Miller* noted that mandatory life-without-parole sentences “preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it.”<sup>8</sup> Although the Court did not require consideration of specific factors, it highlighted the following considerations:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, e.g., *Graham*, 560 U.S., at —, 130 S.Ct., at 2032 (“[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings”); *J.D.B. v. North Carolina*, 564 U.S. —, —, 131 S.Ct. 2394, 2400–2401, 180 L.Ed.2d 310 (2011) (discussing children's responses to interrogation). And finally, this mandatory punishment

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<sup>7</sup> See *Guzman v. State*, --- So.3d ----, 2013 WL 949889 (Fla. 4th Dist. 2013); *Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning - see *Young v. State*, --- So.3d --, 2013 WL 614247(Fla. 2d DCA 2013). The reported longest sentence under the 85% law that was allowed to stand was 100 years for burglary of a dwelling while armed (*Johnson v. State*, --- So.3d ----, 2013 WL 1007663 (Fla. 5th Dist. 2013).

<sup>8</sup> *Miller* at 2467.

disregards the possibility of rehabilitation even when the circumstances most suggest it.<sup>9</sup>

The First and Third District Courts of Appeal view *Miller* as a procedural change in the law and have held that it does not apply retroactively to sentences that were final before the opinion was issued.<sup>10</sup> The retroactivity issue has not been addressed by the other District Courts of Appeal, the Florida Supreme Court, or the United States Supreme Court.

### **Graham and Miller Inmates**

The Department of Corrections reports that it currently has custody of 222 juvenile offenders who received a mandatory life sentence for capital murder (*Miller* inmates); 43 inmates who received life sentences for non-homicide offenses (*Graham* inmates);<sup>11</sup> and 39 inmates who received life sentences for committing second degree murder, but who could have been sentenced to a lesser term.<sup>12</sup>

### **Life Expectancy**

The Center for Disease Control's United States Life Tables for 2008 (the most recent published) reflect the following remaining life expectancies for 17-18 year olds in the United States:<sup>13</sup>

<b>Remaining Life Expectancy: 17-18 Year Old Persons in the United States</b>	
Hispanic Females	67.0 years
White Females	64.5 years
Hispanic Males	62.1 years
Black Females	61.3 years
White Males	59.8 years
Black Males	54.9 years

### **Parole**

A January 2008 Blueprint Commission and Department of Juvenile Justice report, "Getting Smart about Juvenile Justice in Florida," included a recommendation that juveniles who received more than a 10 year adult prison sentence should be eligible for parole consideration. Florida Tax Watch also recommended parole consideration for inmates who were under 18 when they

<sup>9</sup> *Miller* at 2468.

<sup>10</sup> *See Gonzalez v. State*, 101 So.3d 886 (Fla. 1st DCA 2012); *Geter v. State*, --- So.3d ----, 2012 WL 4448860 (Fla. 3d DCA 2012).

<sup>11</sup> This includes inmates who were sentenced for attempted murder. In *Manuel v. State*, 48 So.3d 94 (Fla. 2d DCA 2010), the Second District Court of Appeals held that attempted murder is a nonhomicide offense because the act did not result in the death of a human being.

<sup>12</sup> The information is derived from an attachment to an e-mail dated March 22, 2013 from Department of Corrections staff to Senate Criminal Justice Committee staff, which is on file with the Senate Criminal Justice Committee.

<sup>13</sup> The information is from Tables 5, 6, 8, 9, 11 and 12 in the *United States Life Tables, 2008*, National Vital Statistics Reports, Volume 61, Number 3 (September 24, 2012), available at [www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61\\_03.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_03.pdf) (last visited on March 28, 2013).

committed their offense, have served more than 10 years, were not convicted of capital murder, have no prior record, and demonstrated exemplary behavior while in prison.<sup>14</sup>

### III. Effect of Proposed Changes:

The bill amends s. 775.082, F.S., to conform Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment set forth by the United States Supreme Court in the *Graham* and *Miller* decisions. It does so by making changes at the sentencing phase, rather than by creating parole or another post-sentencing release process.

#### ***Graham* Defendants**

The bill provides that a juvenile offender who commits a non-homicide offense that is punishable by life imprisonment<sup>15</sup> may be punished by a term of imprisonment not exceeding 50 years. This provision applies to offenses committed on or after July 1, 2013. Non-homicide juvenile offenders who commit such an offense prior to July 1, 2013, or who have already been sentenced to life imprisonment for such an offense, can be sentenced or resentenced to any punishment authorized by law at the time the crime was committed other than life imprisonment.<sup>16</sup>

#### ***Miller* defendants and other juvenile offenders who commit homicides**

The bill provides that a juvenile offender who is convicted of a capital offense must be sentenced to either life imprisonment or to imprisonment for a term of not less than 50 years. The sentencing court is required to consider the following factors in determining the appropriate sentence:

- The nature and circumstances of the offense committed by the defendant.
- The effect of the crime on the victim's family and on the community.
- The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
- The defendant's background, including his or her family, home, and community environment.
- The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
- The extent of the defendant's participation in the offense.
- The effect, if any, of familial pressure or peer pressure on the defendant's actions.
- The nature and extent of the defendant's prior criminal history.
- The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
- The possibility of rehabilitating the defendant.

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<sup>14</sup> "Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than \$3 Billion," Florida Tax Watch, March 2010, p.47.

<sup>15</sup> This includes life felonies and first-degree felonies punishable by a term of years not exceeding life imprisonment.

<sup>16</sup> As previously discussed, Florida intermediate appellate courts have split on the question of whether *Graham* requires resentencing for a juvenile offender who has been sentenced to a lengthy term of years if the court determines that it is functionally equivalent to a life sentence.

This list includes all of the factors from the portion of the *Miller* opinion that was quoted previously in this analysis.

Consideration of these factors is mandatory in the sentencing of a juvenile offender who has been convicted of a capital offense, or of a life felony or first-degree felony punishable by a term of years not exceeding life imprisonment for committing murder under s. 782.04, F.S.<sup>17</sup>

Under current law, Florida Statutes provide that any offender who is convicted of a life felony under s. 782.04, F.S., can be punished by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. The bill does not change these punishments except to provide that a juvenile offender cannot be sentenced to life imprisonment or to a term of years equal to life imprisonment unless the sentencing court has considered the required factors and concluded that such punishment is appropriate.<sup>18</sup>

Florida Statutes currently provide that any offender who is convicted of murder under s. 782.04, F.S., that is a first-degree felony punishable by a term of years not exceeding life imprisonment can be sentenced to a term of years not exceeding life imprisonment or to a lesser term of years. The bill allows a sentence to a term of years equal to life imprisonment only if the sentencing court has considered the required factors and concluded that such punishment is appropriate.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

The bill does not specify whether its provisions concerning sentencing for murder under s. 782.04, F.S., are intended to apply retroactively or prospectively. A change in a statute is presumed to operate prospectively unless there is a clear showing that it is to be applied retroactively and its retroactive application is constitutionally permissible. *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So.2d 6, 10 (Fla. 1999).

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<sup>17</sup> Although *Miller* technically does not apply to non-mandatory life sentences, requiring consideration of the sentencing factors avoids the possibility of an equal protection claim by a juvenile offender who receives a life sentence after less consideration than is required for a juvenile offender who commits a more serious offense.

<sup>18</sup> The bill creates the phrase “term of years equal to life imprisonment,” leaving the courts to decide whether a particular term of years is the equivalent of a life sentence.

Article X, section 9 of the Florida Constitution (the “Savings Clause”) provides: “Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.” This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. *See State v. Smiley*, 966 So.2d 330 (Fla. 2007). The Savings Clause prevents retroactive application of a statute that affects prosecution or punishment for a crime, but does not prohibit retroactive application of a statute that is procedural or remedial in nature.

It is well-established that the Savings Clause prohibits application of a statutory reduction in the maximum sentence for a crime to be applied to an offense that was committed before the change. *See, e.g., Castle v. Sand*, 330 So.2d 10 (Fla. 1976) (reduction of maximum sentence for arson from 10 years to 5 years could not be applied to benefit defendant who committed offense before statutory change). Because current case law indicates that *Miller* does not apply retroactively, the Savings Clause prevents applying the bill’s provisions retroactively.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The Criminal Justice Impact conference determined that CS/SB 1350 will have no impact on the need for prison beds. The bill would potentially have an impact on the court system to the extent that sentencing hearings for the offenders affected by the bill may require more time and resources than current sentencing hearings.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Additional Information:**

##### **A. Committee Substitute – Statement of Substantial Changes:** (Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS by Criminal Justice on April 8, 2013:**

- Removes language indicating that the bill’s provisions concerning penalties for murder are retroactive to the extent required by *Miller*.

- Clarifies that the bill applies to offenses that are reclassified to the relevant offense levels by application of an enhancement statute.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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