

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1350

INTRODUCER: Senator Bradley

SUBJECT: Criminal Penalties

DATE: March 21, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1350 conforms Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment as set forth in recent opinions of the United States Supreme Court. It provides that a juvenile offender who is convicted of murder may be sentenced to life imprisonment only after a mandatory hearing at which the judge considers specified factors relating to the offender’s age and attendant circumstance. The bill also limits the maximum sentence for a juvenile offender who does not commit homicide to a term of not more than 50 years.

This bill substantially amends section 775.082 of the Florida Statutes.

II. Present Situation:

In recent years, the United States 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.¹ The first of these was *Roper v. Simmons*, 543

¹ 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.

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.”² Because Florida has abolished parole³ and the Court deems the possibility of executive clemency to be remote,⁴ 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.⁵ 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.⁶ On the other hand, the Fourth and 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.⁷

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

² See *Graham* at 2034

³ 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.

⁴ *Graham* at 2027

⁵ See, e.g.,

⁶ *Adams v. State*, --- So.3d ---, 37 Fla.L.Weekly D1865 (Fla. 1st 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. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011)).

⁷ 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. 2^d 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)).

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.”⁸ 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 disregards the possibility of rehabilitation even when the circumstances most suggest it.⁹

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.¹⁰ Neither the Florida Supreme Court nor the United States Supreme Court have addressed the retroactivity issue.

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);¹¹ and 39 inmates who

⁸ *Miller* at 2467.

⁹ *Miller* at 2468.

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

¹¹ 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.

received life sentences for committing second degree murder, but who could have been sentenced to a lesser term.¹²

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:¹³

Remaining Life Expectancy: 17-18 Year Old Persons in the United States	
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 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.¹⁴

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 imprisonment¹⁵ 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

¹² 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.

¹³ 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 (last visited on March 28, 2013).

¹⁴ “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.

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

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.¹⁶

***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:

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

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.¹⁷

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.¹⁸

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

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.¹⁹

The bill states that its provisions concerning sentencing for a murder under s. 782.04, F.S., that is a life felony or a first-degree felony punishable by a term of years not exceeding life imprisonment are retroactive only to the extent necessary to meet constitutional requirements set forth in *Miller*. This will permit application of the bill's provisions even if a higher appellate court determines that *Miller* applies retroactively to sentences that were final before the opinion was issued, or that it applies to non-mandatory life sentences of juvenile offenders.²⁰

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 the bill 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.

¹⁹ See note 21.

²⁰ The bill does not address whether its provisions concerning sentencing for capital offenses apply retroactively. It appears that this is an error and that it should apply the same as for the other offenses.

VI. Technical Deficiencies:

The bill addresses whether its provisions apply retroactively for sentencing of all offenses other than capital offenses. It is recommended that the bill be amended to provide its provisions concerning sentencing for capital offenses be retroactive to the extent required by *Miller*.

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.)

None.

B. Amendments:

None.