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1                   A bill to be entitled  
2           An act relating to criminal penalties; amending s.  
3           775.082, F.S.; providing criminal sentences applicable  
4           to a person who was under the age of 18 years at the  
5           time the offense was committed; requiring that a judge  
6           consider certain factors before determining if life  
7           imprisonment is an appropriate sentence; providing for  
8           review of certain sentences of offenders who were  
9           under the age of 18 at the time of the offense;  
10          providing requirements and procedures for such  
11          reviews; providing an effective date.

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13   Be It Enacted by the Legislature of the State of Florida:

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

17           775.082 Penalties; applicability of sentencing structures;  
18   mandatory minimum sentences for certain reoffenders previously  
19   released from prison.—

20           (1) (a) Except as provided in paragraph (b), a person who  
21   has been convicted of a capital felony shall be punished by  
22   death if the proceeding held to determine sentence according to  
23   the procedure set forth in s. 921.141 results in findings by the  
24   court that such person shall be punished by death, otherwise  
25   such person shall be punished by life imprisonment and shall be  
26   ineligible for parole.

27           (b) A person who is convicted of a capital felony, or an  
28   offense that was reclassified as a capital felony, that was  
29   committed before the person was 18 years of age shall be

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30 punished by life imprisonment and is ineligible for parole if  
31 the judge at a mandatory sentencing hearing concludes that life  
32 imprisonment is an appropriate sentence. In determining whether  
33 life imprisonment is an appropriate sentence, the judge shall  
34 consider factors relevant to the offense and to the defendant's  
35 youth and attendant circumstances, including, but not limited  
36 to:

37 1. The nature and circumstances of the offense committed by  
38 the defendant.

39 2. The effect of the crime on the victim's family and on  
40 the community.

41 3. The defendant's age, maturity, intellectual capacity,  
42 and mental and emotional health at the time of the offense.

43 4. The defendant's background, including his or her family,  
44 home, and community environment.

45 5. The effect, if any, of immaturity, impetuosity, or  
46 failure to appreciate risks and consequences on the defendant's  
47 participation in the offense.

48 6. The extent of the defendant's participation in the  
49 offense.

50 7. The effect, if any, of familial pressure or peer  
51 pressure on the defendant's actions.

52 8. The nature and extent of the defendant's prior criminal  
53 history.

54 9. The effect, if any, of characteristics attributable to  
55 the defendant's youth on the defendant's judgment.

56 10. The possibility of rehabilitating the defendant.

57  
58 If the judge concludes that life imprisonment is not an

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59 appropriate sentence, the defendant shall be punished by  
60 imprisonment for a term of not less than 50 years.

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

63 (a)1. For a life felony committed before ~~prior to~~ October  
64 1, 1983, by a term of imprisonment for life or for a term of  
65 years not less than 30.

66 2. For a life felony committed on or after October 1, 1983,  
67 by a term of imprisonment for life or by a term of imprisonment  
68 not exceeding 40 years.

69 3. Except as provided in subparagraph 4., for a life felony  
70 committed on or after July 1, 1995, by a term of imprisonment  
71 for life or by imprisonment for a term of years not exceeding  
72 life imprisonment.

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

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

77 (II) A split sentence that is a term of not less than 25  
78 years' imprisonment and not exceeding life imprisonment,  
79 followed by probation or community control for the remainder of  
80 the person's natural life, as provided in s. 948.012(4).

81 b. For a life felony committed on or after July 1, 2008,  
82 which is a person's second or subsequent violation of s.  
83 800.04(5)(b), by a term of imprisonment for life.

84 5. Notwithstanding subparagraphs 1.-4., a person convicted  
85 under s. 782.04 for an offense that was reclassified as a life  
86 felony that was committed before the person was 18 years of age  
87 is eligible to be punished by a term of imprisonment for life or

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88 by a term of years equal to life imprisonment if the judge at a  
89 mandatory sentencing hearing considers factors relevant to the  
90 offense and to the defendant's youth and attendant  
91 circumstances, including, but not limited to, the factors listed  
92 in paragraph (1)(b) and concludes that imprisonment for life or  
93 a term of years equal to life imprisonment is an appropriate  
94 sentence.

95 6. For offenses committed on or after July 1, 2013, a  
96 person convicted of a life felony or of an offense that was  
97 reclassified as a life felony, other than an offense listed in  
98 s. 782.04, that was committed before the person was 18 years of  
99 age shall be punished by a term of imprisonment not to exceed 50  
100 years.

101 (b) Except as provided in subparagraphs 1. and 2., for a  
102 felony of the first degree, by a term of imprisonment not  
103 exceeding 30 years or, when specifically provided by statute, by  
104 imprisonment for a term of years not exceeding life  
105 imprisonment.

106 1. A person convicted under s. 782.04 of a first-degree  
107 felony punishable by a term of years not exceeding life  
108 imprisonment, or an offense that was reclassified as a first-  
109 degree felony punishable by a term of years not exceeding life  
110 imprisonment, that was committed before the person was 18 years  
111 of age is eligible for a term of years equal to life  
112 imprisonment if the judge at a mandatory sentencing hearing  
113 considers factors relevant to the offense and to the defendant's  
114 youth and attendant circumstances, including, but not limited  
115 to, the factors listed in paragraph (1)(b) and concludes that a  
116 term of years equal to life imprisonment is an appropriate

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117 sentence.

118 2. For offenses committed on or after July 1, 2013, a  
119 person convicted for a first-degree felony punishable by a term  
120 of years not exceeding life imprisonment or of an offense that  
121 was reclassified as a first-degree felony punishable by a term  
122 of years not exceeding life imprisonment, other than an offense  
123 listed in s. 782.04, that was committed before the person was  
124 18 years of age shall be punished by a term of imprisonment not  
125 to exceed 50 years.

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

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

130 Section 2. A person who is sentenced for a crime he or she  
131 committed when he or she was under the age of 18 is entitled to  
132 a review of his or her sentence as follows:

133 (1) A person sentenced to life in prison without parole,  
134 life in prison, or a term of 50 years or greater shall have his  
135 or her sentence reviewed after 25 years. The sentencing court  
136 shall retain original jurisdiction for the duration of the  
137 sentence for this purpose. The Department of Corrections shall  
138 notify juvenile offenders who are committed to the department of  
139 their eligibility to participate in a resentencing hearing 18  
140 months prior to the beginning of their 25th year of  
141 incarceration. The juvenile offender may apply to the court of  
142 original jurisdiction requesting that a resentencing hearing be  
143 held.

144 (a) An offender is entitled to be represented by counsel,  
145 and the court shall appoint a public defender to represent the

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146 offender if the offender cannot afford an attorney.

147 (b) The court shall hold a resentencing hearing to  
148 determine whether the offender's sentence should be modified.

149 The resentencing court shall consider all of the following:

150 1. Whether the offender demonstrates maturity and  
151 rehabilitation.

152 2. Whether the offender remains at the same level of risk  
153 to society as he or she did at the time of the initial  
154 sentencing.

155 3. The opinion of the victim or the victim's next of kin.  
156 The absence of the victim or the victim's next of kin from the  
157 resentencing hearing may not be a factor in the court's  
158 determination under this section. If the victim or the victim's  
159 next of kin chooses not to participate in the hearing, the court  
160 may consider previous statements made by the victim or the  
161 victim's next of kin during the trial or initial sentencing  
162 phase.

163 4. Whether the offender was a relatively minor participant  
164 in the criminal offense or acted under extreme duress or the  
165 domination of another person.

166 5. Whether the offender has shown sincere and sustained  
167 remorse for the criminal offense.

168 6. Whether the offender's age, maturity, and psychological  
169 development at the time of the offense affected his or her  
170 behavior.

171 7. Whether the offender has successfully obtained a general  
172 educational development certificate or completed another  
173 educational, technical, work, vocational, or self-rehabilitation  
174 program, if such a program is available.

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175 8. Whether the offender was a victim of sexual, physical,  
176 or emotional abuse before he or she committed the offense.

177 9. The results of any mental health assessment, risk  
178 assessment, or evaluation of the offender as to rehabilitation.

179 (c) If the court determines at the resentencing hearing  
180 that the offender has been rehabilitated and is reasonably  
181 believed to be fit to reenter society based on these factors, a  
182 term of probation of at least 5 years shall be imposed. If the  
183 court determines that the offender has not demonstrated  
184 rehabilitation and is not fit to reenter society based on these  
185 factors, the court shall issue an order in writing stating the  
186 reasons the sentence is not being modified.

187 (d) An offender who is not resentenced under this  
188 subsection at the initial resentencing is eligible for up to  
189 three additional sentencing reviews. A minimum of 5 years must  
190 pass before the individual is eligible for the sentencing  
191 review. An offender sentenced to a term of years less than life  
192 may not petition the court for a review of his or her sentence  
193 if he or she is in the last 5 years of his or her sentence.

194 (2) If the person convicted is sentenced to a term of years  
195 greater than 25 years but less than 50 years, the person shall  
196 be entitled to a single review hearing at the midpoint of his or  
197 her sentence. The person shall be subject to the resentencing  
198 guidelines set forth in paragraph (b). If the judge at the  
199 resentencing hearing determines that the original sentence is  
200 appropriate, no other reviews shall be granted.

201 (3) This section is retroactive to the extent necessary to  
202 comply with the ruling of the United State Supreme Court in  
203 Miller v. Alabama, 567 U.S. , No. 10-9646 (2012) and

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204 Graham v. Florida, 560 U.S. \_\_\_\_\_, No. 08-7412 (2010).  
205 Section 3. This act shall take effect July 1, 2013.