

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative McGhee offered the following:

Amendment (with title amendment)

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

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

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21 punished by life imprisonment and is ineligible for parole if
22 the judge at a mandatory sentencing hearing concludes that life
23 imprisonment is an appropriate sentence. In determining whether
24 life imprisonment is an appropriate sentence, the judge shall
25 consider factors relevant to the offense and to the defendant's
26 age and attendant circumstances, including, but not limited to:

27 1. The nature and circumstances of the offense committed
28 by the defendant.

29 2. The effect of the crime on the victim's family and on
30 the community.

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

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

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

38 6. The extent of the defendant's participation in the
39 offense.

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

42 8. The nature and extent of the defendant's prior criminal
43 history.

44 9. The effect, if any, of characteristics attributable to
45 the defendant's age on the defendant's judgment at the time of
46 the offense.

47 10. The possibility of rehabilitating the defendant.
48

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49 If the judge concludes that life imprisonment is not an
50 appropriate sentence, the defendant shall be punished by
51 imprisonment for a term of not less than 30 years. This
52 paragraph applies retroactively only to the extent necessary to
53 meet constitutional requirements for imposing a life sentence on
54 a defendant who is convicted of committing a murder that was
55 committed before the person was 18 years of age as set forth by
56 the United States Supreme Court in Miller v. Alabama, 132 S. Ct.
57 2455 (2012).

58 (c)1. A person who is sentenced under paragraph (b) shall
59 have his or her sentence reviewed after 15 years. The
60 sentencing court shall retain original jurisdiction for the
61 duration of the sentence for this purpose. The Department of
62 Corrections shall notify juvenile offenders who are committed to
63 the department of their eligibility to participate in a
64 resentencing hearing 18 months prior to the beginning of their
65 15th year of incarceration. The juvenile offender may apply to
66 the court of original jurisdiction requesting that a
67 resentencing hearing be held.

68 2. A juvenile offender is entitled to be represented by
69 counsel, and the court shall appoint a public defender to
70 represent the juvenile offender if the juvenile offender cannot
71 afford an attorney.

72 3. The court shall hold a resentencing hearing to
73 determine whether the juvenile offender's sentence should be
74 modified. The resentencing court shall consider all of the
75 following:

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76 a. Whether the juvenile offender demonstrates maturity and
77 rehabilitation.

78 b. Whether the juvenile offender remains at the same level
79 of risk to society as he or she did at the time of the initial
80 sentencing.

81 c. The opinion of the victim's next of kin. The absence of
82 the victim's next of kin from the resentencing hearing may not
83 be a factor in the courts determination under this section.

84 d. Whether the juvenile offender was a relatively minor
85 participant in the criminal offense or acted under extreme
86 duress or the domination of another person.

87 e. Whether the juvenile has shown sincere and sustained
88 remorse for the criminal offense.

89 f. Whether the juvenile offender's age, maturity, and
90 psychological development at the time of the offense affected
91 his or her behavior.

92 g. Whether the juvenile offender has successfully obtained
93 a general educational development certificate or completed
94 another educational, technical, work, vocational, or self-
95 rehabilitation program.

96 h. Whether the juvenile offender was a victim of sexual,
97 physical, or emotional abuse before he or she committed the
98 offense.

99 i. The results of any mental health assessment, risk
100 assessment, or evaluation of the juvenile offender as to
101 rehabilitation.

102 4. If the court determines at the resentencing hearing that
103 the juvenile offender has been rehabilitated and is reasonably

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104 believed to be fit to reenter society, the court shall issue an
105 order modifying the sentence imposed and place the offender on
106 probation for a term of at least 5 years. If the court
107 determines that the juvenile offender has not demonstrated
108 rehabilitation and is not fit to reenter society based on these
109 factors, the court shall issue an order in writing stating why
110 the sentence is not being modified.

111 5. A juvenile offender who is not resentenced under this
112 paragraph at the initial resentencing hearing is eligible for a
113 resentencing hearing 5 years after the date of the denial and
114 every 5 years after that.

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

117 (a)1. For a life felony committed before ~~prior to~~ October
118 1, 1983, by a term of imprisonment for life or for a term of
119 years not less than 30.

120 2. For a life felony committed on or after October 1,
121 1983, by a term of imprisonment for life or by a term of
122 imprisonment not exceeding 40 years.

123 3. Except as provided in subparagraph 4., for a life
124 felony committed on or after July 1, 1995, by a term of
125 imprisonment for life or by imprisonment for a term of years not
126 exceeding life imprisonment.

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

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

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

135 b. For a life felony committed on or after July 1, 2008,
136 which is a person's second or subsequent violation of s.
137 800.04(5)(b), by a term of imprisonment for life.

138 5.a. Notwithstanding subparagraphs 1.-4., a person
139 convicted under s. 782.04 for an offense that was reclassified
140 as a life felony that was committed before the person was 18
141 years of age is eligible to be punished by a term of
142 imprisonment for life or by a term of years equal to life
143 imprisonment if the judge at a mandatory sentencing hearing
144 considers factors relevant to the offense and to the defendant's
145 age and attendant circumstances, including, but not limited to,
146 the factors listed in paragraph (1)(b) and concludes that
147 imprisonment for life or a term of years equal to life
148 imprisonment is an appropriate sentence.

149 b. A person sentenced under paragraph (b)2. shall have his
150 or her sentence reviewed after 10 years. The sentencing court
151 shall retain original jurisdiction for the duration of the
152 sentence for this purpose. The Department of Corrections shall
153 notify juvenile offenders who are committed to the department of
154 their eligibility to participate in a resentencing hearing 18
155 months prior to the beginning of their 10th year of
156 incarceration. The juvenile offender may apply to the court of
157 original jurisdiction requesting that a resentencing hearing be

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158 held. This section does not apply to those sentenced to a term
159 of 10 years or less.

160 c. If the court determines at the resentencing hearing that
161 the juvenile offender has been rehabilitated and is reasonably
162 believed to be fit to reenter society, the court shall issue an
163 order modifying the sentence imposed and place the offender on
164 probation for a term of at least 5 years. If the court
165 determines that the juvenile offender has not demonstrated
166 rehabilitation and is not fit to reenter society based on these
167 factors, the court shall issue an order in writing stating why
168 the sentence is not being modified.

169 d. A juvenile offender who is not resentenced under this
170 paragraph at the initial resentencing hearing is eligible for a
171 resentencing hearing 5 years after the date of the denial and
172 every 5 years after that.

173
174 This subparagraph applies retroactively only to the extent
175 necessary to meet constitutional requirements for imposing a
176 life sentence on a defendant who is convicted of committing a
177 murder that was committed before the person was 18 years of age
178 as set forth by the United States Supreme Court in Miller v.
179 Alabama, 132 S. Ct. 2455 (2012).

180 (b)1. For a felony of the first degree, by a term of
181 imprisonment not exceeding 30 years or, when specifically
182 provided by statute, by imprisonment for a term of years not
183 exceeding life imprisonment.

184 2. Notwithstanding subparagraph 1., a person convicted
185 under s. 782.04 of a first-degree felony punishable by a term of

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186 years not exceeding life imprisonment, or an offense that was
187 reclassified as a first-degree felony punishable by a term of
188 years not exceeding life, that was committed before the person
189 was 18 years of age shall be punished by a term of imprisonment
190 not to exceed 25 years.

191 3. A person sentenced under paragraph (b)2. shall have his
192 or her sentence reviewed after 10 years. The sentencing court
193 shall retain original jurisdiction for the duration of the
194 sentence for this purpose. The Department of Corrections shall
195 notify juvenile offenders who are committed to the department of
196 their eligibility to participate in a resentencing hearing 18
197 months prior to the beginning of their 10th year of
198 incarceration. The juvenile offender may apply to the court of
199 original jurisdiction requesting that a resentencing hearing be
200 held. This section does not apply to those sentenced to a term
201 of 10 years or less.

202 4. If the court determines at the resentencing hearing that
203 the juvenile offender has been rehabilitated and is reasonably
204 believed to be fit to reenter society, the court shall issue an
205 order modifying the sentence imposed and place the offender on
206 probation for a term of at least 5 years. If the court
207 determines that the juvenile offender has not demonstrated
208 rehabilitation and is not fit to reenter society based on these
209 factors, the court shall issue an order in writing stating why
210 the sentence is not being modified.

211 5. A juvenile offender who is not resentenced under this
212 paragraph at the initial resentencing hearing is eligible for a

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213 resentencing hearing 5 years after the date of the denial and
214 every 5 years after that.

215

216 This subparagraph applies retroactively only to the extent
217 necessary to meet constitutional requirements for imposing a
218 life sentence on a defendant who is convicted of committing a
219 murder that was committed before the person was 18 years of age
220 as set forth by the United States Supreme Court in Miller v.
221 Alabama, 132 S. Ct. 2455 (2012).

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

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

226 (e)1. Notwithstanding paragraphs (a)-(d), for an offense
227 committed on or after July 1, 2013, a person convicted of a life
228 felony or an offense punishable by a term of years not exceeding
229 life imprisonment, other than an offense listed in s. 782.04, or
230 an offense, other than an offense listed in s. 782.04, that was
231 reclassified as a life felony or an offense punishable by a term
232 of years not exceeding life, that was committed before the
233 person was 18 years of age shall be punished by a term of
234 imprisonment not to exceed 25 years.

235 2. A person sentenced under this subparagraph shall have
236 his or her sentence reviewed after 10 years. The sentencing
237 court shall retain original jurisdiction for the duration of the
238 sentence for this purpose. The Department of Corrections shall
239 notify juvenile offenders who are committed to the department of
240 their eligibility to participate in a resentencing hearing 18

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241 months prior to the beginning of their 10th year of
242 incarceration. The juvenile offender may apply to the court of
243 original jurisdiction requesting that a resentencing hearing be
244 held. This section does not apply to those sentenced to a term
245 of 10 years or less.

246 3. If the court determines at the resentencing hearing that
247 the juvenile offender has been rehabilitated and is reasonably
248 believed to be fit to reenter society, the court shall issue an
249 order modifying the sentence imposed and place the offender on
250 probation for a term of at least 5 years. If the court
251 determines that the juvenile offender has not demonstrated
252 rehabilitation and is not fit to reenter society based on these
253 factors, the court shall issue an order in writing stating why
254 the sentence is not being modified.

255 4. A juvenile offender who is not resentenced under this
256 paragraph at the initial resentencing hearing is eligible for a
257 resentencing hearing 5 years after the date of the denial and
258 every 5 years after that.

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

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263 **T I T L E A M E N D M E N T**

264 Remove line 9 and insert:

265 circumstances; providing for a review after a specified number
266 of years of the juvenile's sentence; providing for eligibility
267 screening; providing for a hearing; providing factors for
268 consideration; providing for modification of sentence; providing

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7137 (2013)

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269 | for future review hearings for juveniles who are not
270 | resentenced; providing an effective date.

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