

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7137 PCB CRJS 13-06 Juvenile Sentencing
SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee; Pilon
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	10 Y, 3 N	Cox	Cunningham
1) Justice Appropriations Subcommittee	8 Y, 5 N	Toms	Jones Darity
2) Judiciary Committee	13 Y, 3 N, As CS	Cox	Havlicak

SUMMARY ANALYSIS

In 2010, the United States Supreme Court held in *Graham v. Florida* that the 8th Amendment of the U.S. Constitution prohibits states from sentencing juvenile nonhomicide offenders to life without providing a meaningful opportunity to obtain release. In 2012, the United States Supreme Court held in *Miller v. Alabama* that the 8th Amendment of the U.S. Constitution prohibits a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders convicted of a homicide offense. The Court held that children are constitutionally different from adults and as a result, the sentencer must take into consideration these differences before sentencing these offenders to one of the most severe punishments available in the criminal justice system.

To address the *Graham* decision, the bill amends s. 775.082, F.S., to prohibit a court from imposing a life sentence on juveniles convicted of a nonhomicide life felony or a nonhomicide offense punishable by a term of years not exceeding life imprisonment, that was committed on or after July 1, 2013. Instead, the court must sentence such offenders to a term of imprisonment that cannot exceed 50 years.

The bill addresses the *Miller* decision by making a variety of changes to s. 775.082, F.S. The bill *requires* juveniles convicted of a capital felony to be sentenced to life imprisonment, but only if the judge, after considering specified factors at a mandatory sentencing hearing, concludes that life imprisonment is an appropriate sentence. If the judge determines that life imprisonment is not appropriate, the court must sentence the juvenile to no less than 50 years imprisonment.

The bill *permits* a court to sentence a juvenile offender convicted of a life felony or first degree felony homicide offense to life imprisonment, but only if the judge, after considering specified factors at a mandatory sentencing hearing, concludes that life imprisonment is an appropriate sentence. In these instances, the bill does not prescribe a minimum sentence if the judge determines that life imprisonment is not appropriate.

On March 21, 2013, the Criminal Justice Impact Conference determined that SB 1350, which is substantially similar to this bill, would have no impact on prison beds.

The bill provides and effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Graham v. Florida

In 2010, the United States Supreme Court held in *Graham v. Florida*¹ that the 8th Amendment of the U.S. Constitution² prohibits states from sentencing juvenile nonhomicide offenders to a life sentence without providing a meaningful opportunity to obtain release. The Court's opinion stated:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.³

Graham was held to apply retroactively, even to criminal cases which were considered final at the time *Graham* was rendered.⁴

Post-Graham Decisions

Subsequent to the *Graham* decision, inmates who were convicted of nonhomicide offenses and sentenced to life imprisonment before *Graham* was decided began petitioning for and receiving resentencing hearings. There appears to be no consolidated source for obtaining the results of these resentencing hearings. However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was seventeen years old was resentenced to a split sentence of 7 years in prison followed by 20 years of probation.⁵
- An inmate sentenced to four life sentences for armed robberies committed in 2004 and 2005 when he was 14 and 15 years old was resentenced to a term of 30 years.⁶
- An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years.⁷

Juvenile offenders convicted and sentenced after the issuance of *Graham* have received lengthy prison sentences. For example:

- An inmate was sentenced to concurrent 50 years in prison with a 25-year mandatory minimum for armed robbery and aggravated battery,⁸
- An inmate was sentenced to 70 years in prison for attempted first degree murder, including a 25 year mandatory minimum for the use of a firearm;⁹

¹ *Graham v. Florida*, 130 S.Ct. 2011 (2010).

² The 8th Amendment of the U.S. Constitution forbids the government from imposing cruel and unusual punishment.

³ *Graham*, at 2016.

⁴ See *Witt v. State*, 387 So.2d 922, 925 (Fla. 1980)(Court held that the "doctrine of finality should be abridged only when a more compelling objective appears, such as ensuring fairness and uniformity in individual adjudications....a sweeping change of law can so drastically alter the substantive or procedural underpinnings of a final conviction and sentence that ... post-conviction relief is necessary to avoid individual instances of obvious injustice."). In addition, Florida courts have held that *Graham* applies retroactively even without applying the *Witt* standard. *Kleppinger v. State*, 81 So.3d 547, 549 (Fla. 2nd DCA 2012).

⁵ "Rapist who was serving life sentence will get second chance," August 30, 2011, <http://www2.tbo.com/news/breaking-news/2011/aug/30/3/rapist-who-was-serving-life-resentenced-to-seven-y-ar-254096/> (last visited on March 14, 2013).

⁶ "Man who served 11 years fails to persuade Hillsborough judge to set him free," October 6, 2011, <http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464> (last visited on March 14, 2013).

⁷ "Teenage rapist Jose Walle resentenced to 65 years in prison," November 17, 2010, <http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-resentenced-to-65-years-in-prison/1134862> (last visited on March 14, 2013).

⁸ *Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011). The Court held that the defendant's sentence of a term-of-years totaling 50 years is not the functional equivalent of a life sentence for purposes of the Eighth Amendment prohibition on life was not constitutionally excessive.

- An inmate was sentenced to 60 years in prison with an aggregate minimum mandatory term of 50 years for attempted first degree murder, armed burglary and armed robbery.¹⁰

Juveniles who have been sentenced or resentenced subsequent to *Graham* have challenged their sentences on grounds that they effectively constitute a life sentence. To date, Florida's District Courts of Appeal have provided a wide range of rulings. Some courts have applied a strict reading of *Graham* holding that *Graham* only applies when a defendant is sentenced to a term of life imprisonment, not a lengthy term of years.¹¹ Other courts have held that a term of years sentence is not in violation of *Graham* if the sentence is for multiple nonhomicide offenses, thus limiting the application of *Graham* to a singular nonhomicide offense where a juvenile is sentenced to life.¹² Yet still other courts have held that *any* sentence which will result in the juvenile being incarcerated past that juvenile's life expectancy is violative of the *Graham* decision.¹³ Courts also disagree on the number of years that is the functional equivalent of a life sentence for the purposes of *Graham*.¹⁴

Several of these conflicting rulings have been certified to the Florida Supreme Court, and have been granted review.

Effect of the Bill

The bill amends s. 775.082, F.S., to prohibit a court from imposing a life sentence on juveniles convicted of a nonhomicide life felony or a nonhomicide offense punishable by a term of years not exceeding life imprisonment (or an offense reclassified as such), that was committed on or after July 1, 2013. Instead, the court must sentence such offenders to a term of imprisonment that cannot exceed 50 years.

To date, none of the Florida District Courts of Appeal have held a sentence of 50 years unconstitutional based on *Graham*. This provision complies with *Graham* in that it prohibits a juvenile convicted of a nonhomicide offense from being sentenced to life.

Miller v. Alabama

In 2012, the United States Supreme Court held in *Miller v. Alabama* that the 8th Amendment of the U.S. Constitution¹⁵ prohibits a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders.¹⁶ *Miller* does not prohibit a court from sentencing a juvenile offender convicted of a homicide offense to life without parole, but requires the sentencer to take into consideration "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" before doing so.¹⁷ The Court's opinion stated:

⁹ *Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011). The Court held that a term-of-years sentence of 70 years including a 25 year mandatory minimum was not constitutionally excessive. The Florida Supreme Court granted review on October 11, 2012.

¹⁰ *Adams v. State*, 2012 WL 3193932. The Court held that a term-of-years sentence which would require the juvenile to serve a minimum of 58.5 years was unconstitutional for purposes of the 8th Amendment. The Court held that, at the earliest, the juvenile would not be released until he was 76 years of age, which was past the life expectancy, thus the sentence was a de facto life sentence. The Court certified conflict with the case *Henry v. State*, 82 So.3d 1084 (Fla. 5th D.C.A. 2012).

¹¹ See *Walle v. State*, 99 So.3d 967, 971 (Fla. 1st DCA 2012)(Court held that the expressed holdings of *Graham* and *Miller* were not violated and held that extending the rulings would be left for the Supreme Court.); *Henry v. State*, 82 So.3d 1084, 1089 (Fla. 5th DCA 2012)(Court held that a defendant's aggregate term-of-years sentence totaling 90 years in prison was not unconstitutionally excessive. Review granted by the Florida Supreme Court on November 6, 2012.)

¹² *Walle*, at 972.

¹³ See *Floyd v. State*, 87 So.3d 45, 47 (Fla. 1st DCA 2012); *Adams*, at 2.

¹⁴ See *Walle v. State*, 99 So.3d 967 (Fla. 1st DCA 2012)(Court held a sentence of 65 years consecutive to a 27 year sentence was not violative of the 8th Amendment); *Henry v. State*, 82 So.3d 1084 (Court held that 90 years, of which he would be required to serve at least 76.5 years was not violative of the 8th Amendment); *Floyd v. State*, 87 So.3d 45, 47 (Fla. 1st DCA 2012)(Court held that consecutive sentences of 40 years, totaling 80 years, was unconstitutional under the 8th Amendment.); *Adams v. State*, 2012 WL 3193932 (Court held that a 60 year sentence which would require the juvenile to serve a minimum of 58.5 years was unconstitutional under the 8th Amendment.)

¹⁵ *Supra* note 1.

¹⁶ *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

¹⁷ *Id.* at 2469.

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.^{18,19}

Unlike *Graham*, the ruling in *Miller* has been held by Florida District Courts to not apply retroactively to juveniles who were sentenced to life for homicide offenses before *Miller* was rendered.²⁰ If this holding is confirmed by higher courts, juveniles convicted of a homicide offense whose judgments were final at the time *Miller* was rendered will not be entitled to be resentenced.

Effect of the Bill

The bill amends s. 775.082, F.S., to *require* a court to sentence a person convicted of a capital felony or an offense that was reclassified as a capital felony, that was committed before the person was 18, to life imprisonment if the judge, at a mandatory sentencing hearing, concludes that life imprisonment is an appropriate sentence. In determining whether life imprisonment is an appropriate sentence, the judge must consider factors relevant to the offense and to the juvenile offender's youth and attendant circumstances, including, but not limited to the:

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

If the judge concludes that life imprisonment is not an appropriate sentence, the juvenile offender must be sentenced to a term of imprisonment of not less than 50 years.

The bill *permits* a court to sentence a juvenile offender convicted of a homicide offense²¹ that is a life felony or first degree felony (or an offense that was reclassified as such), that was committed before the person was 18, to life imprisonment, but only if the judge, after considering the above-described factors at a mandatory sentencing hearing, concludes that life imprisonment is an appropriate sentence. In these instances, the bill does not prescribe a minimum sentence if the judge determines that life imprisonment is not appropriate.

¹⁸ *Id.* at 2468.

¹⁹ The Court further held that “*Graham, Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” *See also Roper v. Simmons*, 543 S.Ct. 551(2005)(Court barred capital punishment for children and first held that children are constitutionally different from adults for purposes of sentencing.); *Woodson v. North Carolina*, 96 S.Ct. 2978 (1976)(Court held that imposition of mandatory death sentence without consideration of the character and record of the individual offender or the circumstances of the particular offense was inconsistent with the fundamental respect for humanity which underlies the 8th Amendment.)

²⁰ *See Geter v. State*, 3D12-1736, 2012 WL 4448860 (Fla. 3rd DCA Sept. 27, 2012)(Court held that the ruling in *Miller* was not a development of “fundamental significance;” because “*Miller* mandates only that a sentencer follow a certain process before imposing life sentence. . . . this was a procedural change providing for new process in juvenile homicide sentencing and was merely an evolutionary refinement in criminal law that did not compel abridgement of the finality of judgments.”); *Gonzalez v. State*, 101 So.3d 886, 887 (Fla. 1st DCA 2012).

²¹ Section 782.04, F.S.

The bill complies with *Miller* in that it prohibits a juvenile convicted of a homicide offense from being sentenced to life or a term of years equal to life without the judge having considered “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” before doing so.²²

B. SECTION DIRECTORY:

Section 1. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

On March 21, 2013, the Criminal Justice Impact Conference determined that SB 1350, which is substantially similar to this bill, would have no impact on prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

²² *Miller*, at 2469.

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 16, 2013, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes the language providing that the portions of the bill addressing the *Miller* decision apply retroactively.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.