**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 Appropriations

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| BILL: | SB 384 |
| INTRODUCER: | Senator Bradley |
| SUBJECT: | Juvenile Sentencing |
| DATE: | March 10, 2014 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Dugger | Cannon | CJ | **Favorable** |
| 2. | Davis | Cibula | JU | **Favorable** |
| 3. | Clodfelter | Sadberry | ACJ | **Fav/CS** |
| 4. | Clodfelter | Kynoch | AP | **Pre-meeting** |

## I. Summary:

SB 384 conforms Florida law to recent U.S. Supreme Court decisions involving the sentencing of juvenile offenders. The bill provides that any offender who is convicted of murder that was committed before he or she was 18 years old may be sentenced to life imprisonment only after a mandatory hearing at which the judge considers certain factors relative to the offender's age and attendant circumstances. For capital offenses, the judge must impose a minimum sentence of at least 35 years if life imprisonment is not appropriate.

The bill also provides for a judicial hearing to review any sentence of more than 25 years, including a life sentence that is imposed for a non-homicide offense committed when the offender was less than 18 years old. The offender may request the sentence review after serving 25 years of the sentence. If the reviewing court determines that the offender has been rehabilitated and is fit to reenter society, the offender must be released with a modified sentence that requires serving a minimum term of 5 years of probation. Otherwise, the court must enter a written order stating the reasons for not modifying the sentence.

The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill has no impact on prison beds. The bill may have an impact on the court system to the extent that sentencing and resentencing hearings for offenders affected by the bill will require more time and resources. However, according to the Office of the State Courts Administrator, any fiscal impact cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial and court staff workload.

## II. Present Situation:

In recent years, the U.S. Supreme Court issued several decisions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment as it relates to the

punishment of juvenile offenders.[1] The first of these was *Roper v. Simmons*, 543 U.S. 551 (2005), in which the Court held that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded juvenile sentencing doctrine in *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

**Graham v. Florida**

In *Graham*, the U.S. Supreme Court held that a juvenile offender may not be sentenced to life in prison without the possibility of parole for a non-homicide offense. 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 abolished parole[3] and the Court deems the possibility of executive clemency to be remote,[4] a juvenile offender in Florida cannot presently 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, a juvenile offender who is 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 U.S. 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 District Courts in reviewing sentences for a lengthy term of years. The Florida First District Court of Appeal 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 Florida Fourth and Fifth District 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]

On September 17, 2013, the Florida Supreme Court heard oral argument in *Gridine v. State*, 89 So. 3d 909 (Fla. 1st DCA 2011) and *Henry v. State*, 82 So. 3d 1084 (Fla. 5th DCA 2012). In

[1] The term "juvenile offender" refers to an offender who was less than 18 years of age at the time the offense was committed 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 years 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.
[2] *Graham* at 82.
[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 70.
[5] *See, e.g., St. Val v. State*, 107 So. 3d 553 (Fla. 4th DCA 2013); *Manuel v. State*, 48 So. 3d 94 (Fla. 2d DCA 2010).
[6] *Adams v. State*, 2012 WL 3193932 (Fla. 1st DCA 2012). The First District Court of Appeal 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*, 110 So. 3d 480 (Fla. 4th DCA 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*, 110 So. 3d 931 (Fla. 2d DCA 2013).

*Gridine*, the First District Court of Appeal found that a 70 year sentence was not the equivalent of life. In *Henry*, the Fifth District Court of Appeal upheld a sentence of 90 years because *Graham* does not prohibit a lengthy term of years.

**Miller v. Alabama**

In *Miller*, the U.S. Supreme Court held that juvenile offenders who commit homicide may not 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 factors related to the offender's age must be considered before a life without parole sentence may be imposed. The Court also indicated that it expects few juvenile offenders will be found to merit life without parole sentences.

The majority opinion in *Miller* noted 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 concerns:

> 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]

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 U.S. Supreme Court's holdings in *Roper*, which invalidated the death penalty for juvenile offenders, and *Miller*, the statutory punishment for a juvenile who commits capital murder is not clear. In *Horsley v. State*, 121 So. 3d 1130 (Fla. 5th DCA 2013), the Fifth District Court of Appeal applied the principle of

[8] *Miller* at 2467.
[9] *Miller* at 2468.

statutory revival in concluding that the only possible sentence for a juvenile convicted of capital murder is life with the possibility of parole after 25 years.[10] The Florida Supreme Court has accepted jurisdiction of *Horsley* to address the question of whether *Miller* operates to revive this earlier sentence previously contained in the 1993 statute.[11]

Other state and federal courts have issued differing opinions as to whether *Miller* applies retroactively. The First and Third District Courts of Appeal view *Miller* as a procedural change in the law that does not apply retroactively to sentences that were final before the opinion was issued.[12] The Second District Court of Appeal, in contrast, recently held that *Miller* is retroactive because it was an opinion of fundamental significance.[13] The Fourth and Fifth District Courts of Appeal and the Florida Supreme Court have not addressed the retroactivity issue.[14] However, the Supreme Court has scheduled oral argument on March 6, 2014, to address the question of whether *Miller* should be given retroactive effect.

**Graham and Miller Inmates**

The Department of Corrections reports that in March 2013 it had 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);[15] and 39 inmates who received life sentences for committing second degree murder, but who could have been sentenced to a lesser term.[16]

[10] Life with the possibility of parole after 25 years is the penalty for capital murder under the 1993 version of s. 775.082(1), F.S., the most recent capital murder penalty statute that is constitutional under *Miller* when applied to a juvenile offender.
[11] *Horsley v. State*, 2013 WL 6224657 (Table) (Fla. 2013).
[12] *See Gonzalez v. State*, 101 So. 3d 886 (Fla. 1st DCA 2012); *Geter v. State*, 115 So. 3d 385 (Fla. 3d DCA 2013).
[13] See *Toye v. State*, 2014 WL 228639 (Fla. 2d DCA 2014).
[14] The United States Court of Appeals for the Eleventh Circuit, whose geographical jurisdiction includes cases arising in Florida, has also held that *Miller* does not apply retroactively to cases that are not on direct appeal (*In re Morgan*, 713 F.3d 1365 (11th Cir. 2013)).
[15] 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.
[16] The information is derived from an attachment to an e-mail dated March 22, 2013 from Department of Corrections (DOC) staff to Senate Criminal Justice Committee staff, which is on file with the Senate Committee on Judiciary. A follow-up e-mail dated January 3, 2014, from DOC staff to the Senate Criminal Justice Committee staff (on file with Senate Committee on Judiciary) indicates there have been no significant changes in this information.

### Life Expectancy

The Center for Disease Control's United States Life Tables for 2009 (the most recent published) reflect the following remaining life expectancies for 17-18 year olds in the United States:[17]

| Remaining Life Expectancy: 17-18 Year Old Persons in the United States | |
|---|---|
| Hispanic Females | 67.1 years |
| White Females | 64.8 years |
| Hispanic Males | 62.4 years |
| Black Females | 61.8 years |
| White Males | 60.1 years |
| Black Males | 55.4 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.[18]

## 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 *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012). It does so by: (1) making procedural changes at the sentencing phase for juvenile offenders who are convicted of a murder for which they can be imprisoned for life; and (2) creating a procedure to review the sentence of juvenile offenders after they are incarcerated for 25 years if they are serving a sentence for committing a non-homicide offense.

### *Graham* Defendants

The bill does not change the procedure for original sentencing of juvenile offenders for non-homicide offenses. However, it gives juvenile offenders who are sentenced to more than 25 years, including those sentenced to life, the opportunity to have a resentencing hearing after 25 years of incarceration. The bill requires the Department of Corrections to notify the offender of the right to have a resentencing hearing 18 months before the beginning of his or her 25th year of incarceration. If the offender requests the resentencing hearing, the sentencing court must hold a hearing during which it considers:

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[17] The information is from Tables 5, 6, 8, 9, 11 and 12 in the *United States Life Tables, 2009*, National Vital Statistics Reports, Volume 62, Number 7 (January 6, 2014), *available at* http://www.cdc.gov/nchs/data/nvsr/nvsr62/nvsr62_07.pdf (last visited on February 26, 2014).

[18] Florida Tax Watch, *Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than $3 Billion*, 47 (March 2010).

- Whether the offender demonstrates maturity and rehabilitation.
- Whether the offender is at the same level of risk to society as at the time of the initial sentencing.
- The opinion of the victim or the victim's next of kin, including previous statements made during the trial or initial sentencing phase if the victim or the next of kin chooses not to participate in the resentencing hearing.
- Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.
- Whether the offender has shown sincere and sustained remorse for the criminal offense.
- Whether the offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.
- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if available.
- Whether the offender was a victim of sexual, physical, or emotional abuse before committing the offense.
- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.

If the court finds that the offender has been rehabilitated and reasonably believes that the offender is fit to reenter society, it must impose a probationary term of at least five years. Otherwise, it must enter a written order stating the reasons for not modifying the sentence.

The bill does not expressly state whether its provision relating to a 25-year resentencing hearing for non-homicide offenders is intended to apply retroactively. Therefore, it is presumed to apply prospectively.[19]

***Miller* defendants and other juvenile offenders who commit homicide**

The bill provides for a mandatory sentencing hearing to determine whether a juvenile offender who is convicted of a capital felony (or an offense that is reclassified as a capital felony) will be sentenced to life imprisonment. The bill requires the court to sentence the juvenile offender to life imprisonment if it concludes that life imprisonment is appropriate. In making its determination, the court must consider the following factors that reflect the areas of concern expressed by the United States Supreme Court in *Miller*:

- 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.

[19] *See 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).

- 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.

If the sentencing court concludes life imprisonment is not appropriate, it must sentence the offender to imprisonment for a term of at least 35 years.

The sentencing court must also consider the above factors in sentencing a juvenile offender who has been convicted of murder under s. 782.04, F.S., which is classified as a life felony or a first-degree felony punishable by a term of years not exceeding life imprisonment. Such an offender may only be sentenced to life imprisonment, or to imprisonment for a term of years equal to life imprisonment,[20] if the court considers the factors and concludes that a life sentence is appropriate.[21] If the court concludes that a life sentence is not appropriate, there is not a 35 year minimum sentence requirement as there is in capital cases.

The bill does not state whether this provision relating to juvenile murderers is intended to apply retroactively. Therefore, it is presumed to apply prospectively.[22] The implications of this with regard to those convicted of murders for which a life sentence is mandatory are discussed in paragraph D of the "Constitutional Issues" section of this analysis.

**Correction of Cross-references**

Sections 3, 4, 5, and 6 of the bill conform cross-references to s. 775.082(3), F.S., that are found in ss. 316.3026(2), 373.430(3), 403.161(3), and 648.571(3), F.S., respectively. The corrections are non-substantive and are required by the redesignating of paragraphs in s. 775.082(3), F.S., due to the insertion of a new paragraph (b).

**Effective Date**

This bill takes effect July 1, 2014.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

[20] 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.
[21] 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.
[22] *See* footnote 19.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

**Retroactivity of Provisions Relating to *Miller* (Section 1 of the bill)**

The bill does not specify whether its provisions are intended to apply retroactively or prospectively. A change in a statute is presumed to operate prospectively unless there is a clear showing 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).

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. State*, 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). However, it is likely that the provisions of the Savings Clause in the Florida Constitution would be trumped by a constitutional imperative of the United States Constitution if there is no way to satisfy both clauses.

Florida District Courts of Appeal are split on the issue of whether *Miller* applies retroactively to juvenile offenders who were sentenced to a mandatory life sentence for murder if their appeals were final before the *Miller* opinion was issued.[23] The Florida Supreme Court will consider this issue in the appeal of *Falcon v. State*, 111 So. 3d 973 (Fla. 1st DCA 2013). If the Court holds that *Miller* applies retroactively to this group of offenders, it appears that the constitutional requirement to comply with *Miller* would override the Savings Clause. In that situation, the courts might find that the Legislature intended for Section 1 of the bill to apply retroactively in order to resolve the current lack of a constitutional sentencing alternative to mandatory life imprisonment. Alternatively,

[23] *See* footnotes 12 and 13.

the courts could find that the bill does not apply retroactively and apply the principle of statutory revival to comply with *Miller*.[24]

If the Court holds that *Miller* does not apply retroactively, arguably the Savings Clause would prevent either express or implied retroactive application of the bill to juvenile offenders whose appeals were final before the *Miller* opinion was issued. For those offenders, there would be no federal constitution imperative that could override the Savings Clause. However, *Miller* does apply to juvenile offenders whose appeals were not final before *Miller*, or whose offenses were or will be committed after the opinion was issued but before the bill's effective date. For this limited group of juvenile offenders, the courts might find implied legislative intent to apply the bill retroactively or rely on statutory revival to apply the repealed 1993 statute that allowed for parole consideration after 25 years.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill has no impact on prison beds. The bill may have an impact on the court system to the extent that sentencing and resentencing hearings for offenders affected by the bill will require more time and resources. However, according to the Office of the State Courts Administrator, any fiscal impact cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial and court staff workload.[25]

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 775.082 of the Florida Statutes.

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[24] See footnote 10.

[25] Office of the State Courts Administrator, *2014 Judicial Impact Statement* (December 30 2013) (on file with the Senate Committee on Judiciary).

This bill creates an undesignated section of the Florida law.

This bill amends the following sections of the Florida Statutes to conform to cross-references: 316.3026, 373.430, 403.161, and 648.571.

## IX. Additional Information:

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

None.

B. Amendments:

None.