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LEGISLATIVE ACTION

Senate

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House

Floor: 1/RS/3R

04/23/2014 03:01 PM

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Senator Flores moved the following:

**Senate Amendment (with title amendment)**

Delete 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



978768

12 death if the proceeding held to determine sentence according to  
13 the procedure set forth in s. 921.141 results in findings by the  
14 court that such person shall be punished by death, otherwise  
15 such person shall be punished by life imprisonment and shall be  
16 ineligible for parole.

17 (b)1. A person who actually killed, intended to kill, or  
18 attempted to kill the victim and who is convicted under s.  
19 782.04 of a capital felony, or an offense that was reclassified  
20 as a capital felony, which was committed before the person  
21 attained 18 years of age shall be punished by a term of  
22 imprisonment for life if, after a sentencing hearing conducted  
23 by the court in accordance with s. 921.1401, the court finds  
24 that life imprisonment is an appropriate sentence. If the court  
25 finds that life imprisonment is not an appropriate sentence,  
26 such person shall be punished by a term of imprisonment of at  
27 least 40 years. However, a person sentenced pursuant to this  
28 subparagraph is entitled to a review of his or her sentence in  
29 accordance with s. 921.1402(2)(a). As a result of this review,  
30 the sentence may be reduced as provided in s. 921.1402(7).

31 2. A person who did not actually kill, intend to kill, or  
32 attempt to kill the victim and who is convicted under s. 782.04  
33 of a capital felony, or an offense that was reclassified as a  
34 capital felony, which was committed before the person attained  
35 18 years of age may be punished by a term of imprisonment for  
36 life or by a term of years equal to life if, after a sentencing  
37 hearing conducted by the court in accordance with s. 921.1401,  
38 the court finds that life imprisonment is an appropriate  
39 sentence. If the court finds that life imprisonment is not an  
40 appropriate sentence, such person shall be punished by a term of



978768

41 imprisonment of at least 20 years. A person who is sentenced to  
42 a term of imprisonment of more than 25 years is entitled to a  
43 review of his or her sentence in accordance with s.  
44 921.1402(2)(b).

45 3. For purposes of sentencing, in determining whether a  
46 person actually killed, intended to kill, or attempted to kill  
47 the victim, the court may find that multiple defendants killed,  
48 intended to kill, or attempted to kill the victim.

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

51 (a)1. For a life felony committed before ~~prior to~~ October  
52 1, 1983, by a term of imprisonment for life or for a term of at  
53 least years not less than 30 years.

54 2. For a life felony committed on or after October 1, 1983,  
55 by a term of imprisonment for life or by a term of imprisonment  
56 not exceeding 40 years.

57 3. Except as provided in subparagraph 4., for a life felony  
58 committed on or after July 1, 1995, by a term of imprisonment  
59 for life or by imprisonment for a term of years not exceeding  
60 life imprisonment.

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

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

65 (II) A split sentence that is a term of at least ~~not less~~  
66 ~~than~~ 25 years' imprisonment and not exceeding life imprisonment,  
67 followed by probation or community control for the remainder of  
68 the person's natural life, as provided in s. 948.012(4).

69 b. For a life felony committed on or after July 1, 2008,



70 which is a person's second or subsequent violation of s.  
71 800.04(5)(b), by a term of imprisonment for life.

72 5. Notwithstanding subparagraphs 1.-4., a person who is  
73 convicted under s. 782.04 of an offense that was reclassified as  
74 a life felony which was committed before the person attained 18  
75 years of age may be punished by a term of imprisonment for life  
76 or by a term of years equal to life imprisonment if the judge  
77 conducts a sentencing hearing in accordance with s. 921.1401 and  
78 finds that life imprisonment or a term of years equal to life  
79 imprisonment is an appropriate sentence.

80 a. A person who actually killed, intended to kill, or  
81 attempted to kill the victim and is sentenced to a term of  
82 imprisonment of more than 25 years is entitled to a review of  
83 his or her sentence in accordance with s. 921.1402(2)(b).

84 b. A person who did not actually kill, intend to kill, or  
85 attempt to kill the victim and is sentenced to a term of  
86 imprisonment of more than 20 years is entitled to a review of  
87 his or her sentence in accordance with s. 921.1402(2)(c).

88 c. For purposes of sentencing, in determining whether a  
89 person actually killed, intended to kill, or attempted to kill  
90 the victim, the court may find that multiple defendants killed,  
91 intended to kill, or attempted to kill the victim.

92 (b)1. For a felony of the first degree, by a term of  
93 imprisonment not exceeding 30 years or, when specifically  
94 provided by statute, by imprisonment for a term of years not  
95 exceeding life imprisonment.

96 2. Notwithstanding subparagraph 1., a person convicted  
97 under s. 782.04 of a first-degree felony punishable by a term of  
98 years not exceeding life imprisonment, or an offense that was



978768

99 reclassified as a first degree felony punishable by a term of  
100 years not exceeding life, which was committed before the person  
101 attained 18 years of age may be punished by a term of years  
102 equal to life imprisonment if the judge conducts a sentencing  
103 hearing in accordance with s. 921.1401 and finds that a term of  
104 years equal to life imprisonment is an appropriate sentence.

105 a. A person who actually killed, intended to kill, or  
106 attempted to kill the victim and is sentenced to a term of  
107 imprisonment of more than 25 years is entitled to a review of  
108 his or her sentence in accordance with s. 921.1402(2)(b).

109 b. A person who did not actually kill, intend to kill, or  
110 attempt to kill the victim and is sentenced to a term of  
111 imprisonment of more than 20 years is entitled to a review of  
112 his or her sentence in accordance with s. 921.1402(2)(c).

113 c. For purposes of sentencing, in determining whether a  
114 person actually killed, intended to kill, or attempted to kill  
115 the victim, the court may find that multiple defendants killed,  
116 intended to kill, or attempted to kill the victim.

117 (c) Notwithstanding paragraphs (a) and (b), a person  
118 convicted of an offense that is not included in s. 782.04 but  
119 that is an offense that is a life felony or is punishable by a  
120 term of imprisonment for life or by a term of years not  
121 exceeding life imprisonment, or an offense that was reclassified  
122 as a life felony or an offense punishable by a term of  
123 imprisonment for life or by a term of years not exceeding life  
124 imprisonment, which was committed before the person attained 18  
125 years of age may be punished by a term of imprisonment for life  
126 or a term of years equal to life imprisonment if the judge  
127 conducts a sentencing hearing in accordance with s. 921.1401 and



978768

128 finds that life imprisonment or a term of years equal to life  
129 imprisonment is an appropriate sentence. A person who is  
130 sentenced to a term of imprisonment of more than 20 years is  
131 entitled to a review of his or her sentence in accordance with  
132 s. 921.1402(2)(d).

133 (d)~~(e)~~ For a felony of the second degree, by a term of  
134 imprisonment not exceeding 15 years.

135 (e)~~(d)~~ For a felony of the third degree, by a term of  
136 imprisonment not exceeding 5 years.

137 Section 2. Section 921.1401, Florida Statutes, is created  
138 to read:

139 921.1401 Sentence of life imprisonment for persons who are  
140 under the age of 18 years at the time of the offense; sentencing  
141 proceedings.-

142 (1) Upon conviction or adjudication of guilt of an offense  
143 described in s. 775.082(1)(b), s. 775.082(3)(a)5., s.  
144 775.082(3)(b)2., or s. 775.082(3)(c) which was committed on or  
145 after July 1, 2014, the court may conduct a separate sentencing  
146 hearing to determine if a term of imprisonment for life or a  
147 term of years equal to life imprisonment is an appropriate  
148 sentence.

149 (2) In determining whether life imprisonment or a term of  
150 years equal to life imprisonment is an appropriate sentence, the  
151 court shall consider factors relevant to the offense and the  
152 defendant's youth and attendant circumstances, including, but  
153 not limited to:

154 (a) The nature and circumstances of the offense committed  
155 by the defendant.

156 (b) The effect of the crime on the victim's family and on



157 the community.  
158 (c) The defendant's age, maturity, intellectual capacity,  
159 and mental and emotional health at the time of the offense.  
160 (d) The defendant's background, including his or her  
161 family, home, and community environment.  
162 (e) The effect, if any, of immaturity, impetuosity, or  
163 failure to appreciate risks and consequences on the defendant's  
164 participation in the offense.  
165 (f) The extent of the defendant's participation in the  
166 offense.  
167 (g) The effect, if any, of familial pressure or peer  
168 pressure on the defendant's actions.  
169 (h) The nature and extent of the defendant's prior criminal  
170 history.  
171 (i) The effect, if any, of characteristics attributable to  
172 the defendant's youth on the defendant's judgment.  
173 (j) The possibility of rehabilitating the defendant.  
174 Section 3. Section 921.1402, Florida Statutes, is created  
175 to read:  
176 921.1402 Review of sentences for persons convicted of  
177 specified offenses committed while under the age of 18 years.-  
178 (1) For purposes of this section, the term "juvenile  
179 offender" means a person sentenced to imprisonment in the  
180 custody of the Department of Corrections for an offense  
181 committed on or after July 1, 2014, and committed before he or  
182 she attained 18 years of age.  
183 (2) (a) Except as provided in paragraph (e), a juvenile  
184 offender sentenced under s. 775.082(1)(b)1. is entitled to a  
185 review of his or her sentence after 25 years.



978768

186 (b) Except as provided in paragraph (e), a juvenile  
187 offender sentenced to a term of more than 25 years under s.  
188 775.082(1)(b)2., s. 775.082(3)(a)5.a., or s. 775.082(3)(b)2.a.  
189 is entitled to a review of his or her sentence after 25 years.

190 (c) Except as provided in paragraph (e), a juvenile  
191 offender sentenced to a term of more than 20 years under s.  
192 775.082(3)(a)5.b. or s. 775.082(3)(b)2.b. is entitled to a  
193 review of his or her sentence after 20 years.

194 (d) A juvenile offender sentenced to a term of 20 years or  
195 more under s. 775.082(3)(c) is entitled to a review of his or  
196 her sentence after 20 years. If the juvenile offender is not  
197 resentenced at the initial review hearing, he or she is eligible  
198 for one subsequent review hearing 10 years after the initial  
199 review hearing.

200 (e) A juvenile offender is not entitled to a sentence  
201 review hearing under paragraph (a), paragraph (b), or paragraph  
202 (c) if, before the sentence review hearing, such offender has  
203 been adjudicated delinquent or convicted of one the following  
204 offenses, or conspiracy to commit one of the following offenses:

- 205 1. Murder;
- 206 2. Manslaughter;
- 207 3. Sexual battery;
- 208 4. Armed burglary;
- 209 5. Armed robbery;
- 210 6. Armed carjacking;
- 211 7. Home-invasion robbery;
- 212 8. Human trafficking for commercial sexual activity with a  
213 child under 18 years of age;
- 214 9. False imprisonment under s. 787.02(3)(a); or





978768

215 10. Kidnapping.

216 (3) The Department of Corrections shall notify a juvenile  
217 offender of his or her eligibility to request a sentence review  
218 hearing 18 months before the juvenile offender is entitled to a  
219 sentence review hearing under this section.

220 (4) A juvenile offender seeking sentence review pursuant to  
221 subsection (2) must submit an application to the court of  
222 original jurisdiction requesting that a sentence review hearing  
223 be held. The juvenile offender must submit a new application to  
224 the court of original jurisdiction to request subsequent  
225 sentence review hearings pursuant to subsection (3). The  
226 sentencing court shall retain original jurisdiction for the  
227 duration of the sentence for this purpose.

228 (5) A juvenile offender who is eligible for a sentence  
229 review hearing under this section is entitled to be represented  
230 by counsel, and the court shall appoint a public defender to  
231 represent the juvenile offender if the juvenile offender cannot  
232 afford an attorney.

233 (6) Upon receiving an application from an eligible juvenile  
234 offender, the court of original sentencing jurisdiction shall  
235 hold a sentence review hearing to determine whether the juvenile  
236 offender's sentence should be modified. When determining if it  
237 is appropriate to modify the juvenile offender's sentence, the  
238 court shall consider any factor it deems appropriate, including  
239 all of the following:

240 (a) Whether the juvenile offender demonstrates maturity and  
241 rehabilitation.

242 (b) Whether the juvenile offender remains at the same level  
243 of risk to society as he or she did at the time of the initial



978768

244 sentencing.

245 (c) The opinion of the victim or the victim's next of kin.  
246 The absence of the victim or the victim's next of kin from the  
247 sentence review hearing may not be a factor in the determination  
248 of the court under this section. The court shall permit the  
249 victim or victim's next of kin to be heard, in person, in  
250 writing, or by electronic means. If the victim or the victim's  
251 next of kin chooses not to participate in the hearing, the court  
252 may consider previous statements made by the victim or the  
253 victim's next of kin during the trial, initial sentencing phase,  
254 or subsequent sentencing review hearings.

255 (d) Whether the juvenile offender was a relatively minor  
256 participant in the criminal offense or acted under extreme  
257 duress or the domination of another person.

258 (e) Whether the juvenile offender has shown sincere and  
259 sustained remorse for the criminal offense.

260 (f) Whether the juvenile offender's age, maturity, and  
261 psychological development at the time of the offense affected  
262 his or her behavior.

263 (g) Whether the juvenile offender has successfully obtained  
264 a general educational development certificate or completed  
265 another educational, technical, work, vocational, or self-  
266 rehabilitation program, if such a program is available.

267 (h) Whether the juvenile offender was a victim of sexual,  
268 physical, or emotional abuse before he or she committed the  
269 offense.

270 (i) The results of any mental health assessment, risk  
271 assessment, or evaluation of the juvenile offender as to  
272 rehabilitation.



273           (7) If the court determines at a sentence review hearing  
274 that the juvenile offender has been rehabilitated and is  
275 reasonably believed to be fit to reenter society, the court  
276 shall modify the sentence and impose a term of probation of at  
277 least 5 years. If the court determines that the juvenile  
278 offender has not demonstrated rehabilitation or is not fit to  
279 reenter society, the court shall issue a written order stating  
280 the reasons why the sentence is not being modified.

281           Section 4. Subsection (2) of section 316.3026, Florida  
282 Statutes, is amended to read:

283           316.3026 Unlawful operation of motor carriers.-

284           (2) Any motor carrier enjoined or prohibited from operating  
285 by an out-of-service order by this state, any other state, or  
286 the Federal Motor Carrier Safety Administration may not operate  
287 on the roadways of this state until the motor carrier has been  
288 authorized to resume operations by the originating enforcement  
289 jurisdiction. Commercial motor vehicles owned or operated by any  
290 motor carrier prohibited from operation found on the roadways of  
291 this state shall be placed out of service by law enforcement  
292 officers of the Department of Highway Safety and Motor Vehicles,  
293 and the motor carrier assessed a \$10,000 civil penalty pursuant  
294 to 49 C.F.R. s. 383.53, in addition to any other penalties  
295 imposed on the driver or other responsible person. Any person  
296 who knowingly drives, operates, or causes to be operated any  
297 commercial motor vehicle in violation of an out-of-service order  
298 issued by the department in accordance with this section commits  
299 a felony of the third degree, punishable as provided in s.  
300 775.082(3)(e) ~~775.082(3)(d)~~. Any costs associated with the  
301 impoundment or storage of such vehicles are the responsibility



302 of the motor carrier. Vehicle out-of-service orders may be  
303 rescinded when the department receives proof of authorization  
304 for the motor carrier to resume operation.

305 Section 5. Subsection (3) of section 373.430, Florida  
306 Statutes, is amended to read:

307 373.430 Prohibitions, violation, penalty, intent.—

308 (3) Any person who willfully commits a violation specified  
309 in paragraph (1)(a) is guilty of a felony of the third degree,  
310 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
311 775.083(1)(g), by a fine of not more than \$50,000 or by  
312 imprisonment for 5 years, or by both, for each offense. Each day  
313 during any portion of which such violation occurs constitutes a  
314 separate offense.

315 Section 6. Subsection (3) of section 403.161, Florida  
316 Statutes, is amended to read:

317 403.161 Prohibitions, violation, penalty, intent.—

318 (3) Any person who willfully commits a violation specified  
319 in paragraph (1)(a) is guilty of a felony of the third degree  
320 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
321 775.083(1)(g) by a fine of not more than \$50,000 or by  
322 imprisonment for 5 years, or by both, for each offense. Each day  
323 during any portion of which such violation occurs constitutes a  
324 separate offense.

325 Section 7. Paragraph (c) of subsection (3) of section  
326 648.571, Florida Statutes, is amended to read:

327 648.571 Failure to return collateral; penalty.—

328 (3)

329 (c) Allowable expenses incurred in apprehending a defendant  
330 because of a bond forfeiture or judgment under s. 903.29 may be



331 deducted if such expenses are accounted for. The failure to  
332 return collateral under these terms is punishable as follows:

333 1. If the collateral is of a value less than \$100, as  
334 provided in s. 775.082(4)(a).

335 2. If the collateral is of a value of \$100 or more, as  
336 provided in s. 775.082(3)(e) ~~775.082(3)(d)~~.

337 3. If the collateral is of a value of \$1,500 or more, as  
338 provided in s. 775.082(3)(d) ~~775.082(3)(e)~~.

339 4. If the collateral is of a value of \$10,000 or more, as  
340 provided in s. 775.082(3)(b).

341 Section 8. This act shall take effect July 1, 2014.

342

343 ===== T I T L E A M E N D M E N T =====

344 And the title is amended as follows:

345 Delete everything before the enacting clause  
346 and insert:

347 A bill to be entitled  
348 An act relating to juvenile sentencing; amending s.  
349 775.082, F.S.; providing criminal penalties applicable  
350 to a juvenile offender for certain serious felonies;  
351 requiring a judge to consider specified factors before  
352 determining if life imprisonment is an appropriate  
353 sentence for a juvenile offender convicted of certain  
354 offenses; providing review of sentences for specified  
355 juvenile offenders; creating s. 921.1401, F.S.;  
356 providing sentencing proceedings for determining if  
357 life imprisonment is an appropriate sentence for a  
358 juvenile offender convicted of certain offenses;  
359 providing certain factors a judge shall consider when



360 determining if life imprisonment is appropriate for a  
361 juvenile offender; creating s. 921.1402, F.S.;  
362 defining the term "juvenile offender"; providing  
363 sentence review proceedings to be conducted after a  
364 specified period of time by the original sentencing  
365 court for juvenile offenders convicted of certain  
366 offenses; providing for subsequent reviews; requiring  
367 the Department of Corrections to notify a juvenile  
368 offender of his or her eligibility to participate in  
369 sentence review hearings; entitling a juvenile  
370 offender to be represented by counsel; providing  
371 factors that must be considered by the court in the  
372 sentence review; requiring the court to modify a  
373 juvenile offender's sentence if certain factors are  
374 found; requiring the court to impose a term of  
375 probation for any sentence modified; requiring the  
376 court to make written findings if the court declines  
377 to modify a juvenile offender's sentence; amending ss.  
378 316.3026, 373.430, 403.161, and 648.571, F.S.;  
379 conforming cross-references; providing an effective  
380 date.