

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 7035	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Judiciary Committee; Criminal Justice Subcommittee; Grant and others	115 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/SB 384	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/HB 7035 passed the House on April 1, 2014. The bill was amended by the Senate on April 23, 2014, and subsequently passed the House on May 2, 2014.

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 bill addresses the *Graham* and *Miller* decisions by specifying that a juvenile offender convicted of a:

- *Capital felony* homicide offense where the person actually killed, intended to kill, or attempted to kill the victim **must** be sentenced to life if the judge, after considering specified factors at a mandatory sentencing hearing (sentencing hearing), determines that life is appropriate, or **must** be sentenced to a term of at least 40 years if the judge concludes that life is not appropriate. Such person is entitled to have the court of original jurisdiction (court) review the sentence after 25 years, unless he or she has previously been convicted of an enumerated offense, or conspiracy to commit an enumerated offense;
- *Life or first degree felony* homicide offense where the person actually killed, intended to kill, or attempted to kill the victim **may** be sentenced to life if the judge, after considering specified factors at a sentencing hearing, determines that life is appropriate. Such person is entitled to have the court review the sentence after 25 years if the juvenile is sentenced to a term of imprisonment of more than 25 years;
- *Capital, life, or first degree felony* homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim **may** be sentenced to life if the judge, after considering specified factors at a sentencing hearing, determines that life is appropriate. Such person is entitled to have the court review the sentence after 15 years if the juvenile is sentenced to a term of imprisonment of more than 15 years; and
- *Nonhomicide* offense **may** be sentenced to life, if the judge, after considering specified factors at a sentencing hearing, determines that life is appropriate. Such person is entitled to have the court review the sentence after 20 years if the juvenile is sentenced to a term of imprisonment of more than 20 years. The juvenile offender is eligible for one subsequent review hearing 10 years after the initial review hearing.

On March 3, 2014, the Criminal Justice Impact Conference determined that HB 7035 will have no prison bed impact on the Department of Corrections.

The bill was approved by the Governor on June 20, 2014, ch. 2014-220, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

In recent years, the U.S. Supreme Court has issued several opinions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment in relation to the punishment of juvenile offenders.<sup>1</sup> The first of these was *Roper v. Simmons*, in which the Court found that juvenile offenders cannot be subject to the death penalty for any offense.<sup>2</sup> More recently, the Court expanded constitutional doctrine regarding punishment of juvenile offenders in *Graham v. Florida*<sup>3</sup> and *Miller v. Alabama*.<sup>4</sup>

#### ***Graham v. Florida***

In 2010, the United States Supreme Court decided *Graham v. Florida* and held that the 8th Amendment of the U.S. Constitution 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.<sup>5</sup>

*Graham* was held to apply retroactively, even to criminal cases which were considered final at the time *Graham* was rendered.<sup>6</sup>

Because Florida has abolished parole<sup>7</sup> and the Court deems the possibility of executive clemency to be remote,<sup>8</sup> a juvenile offender in Florida cannot currently be sentenced to life imprisonment for a nonhomicide offense.

#### **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.<sup>9</sup>
- 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.<sup>10</sup>

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<sup>1</sup> The term "juvenile offender" refers to an offender who was under 18 years of age at the time of committing the offense for which he or she was sentenced.

<sup>2</sup> 125 S.Ct. 1183 (2005).

<sup>3</sup> 130 S.Ct. 2011 (2010).

<sup>4</sup> 132 S.Ct. 2455 (2012).

<sup>5</sup> *Graham*, 130 S.Ct. 2011 at 2016.

<sup>6</sup> 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. 2d DCA 2012).

<sup>7</sup> 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.

<sup>8</sup> *Graham*, at 2027.

<sup>9</sup> "Rapist who was serving life sentence will get second chance," August 30, 2011, <http://tbo.com/news/rapist-who-was-serving-life-sentence-will-get-second-chance-254096> (last visited on May 5, 2014).

- 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.<sup>11</sup>

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;<sup>12</sup>
- 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;<sup>13</sup>
- 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> Yet, still other courts have held that *any* sentence which will result in the juvenile being incarcerated past that juvenile's life expectancy violates the holding in *Graham*.<sup>17</sup>

Courts also disagree on the number of years that is the functional equivalent of a life sentence for the purposes of *Graham*.<sup>18</sup> However, this issue may soon be resolved. On September 17, 2013, the Florida Supreme Court heard oral argument in *Gridine v. State* and *Henry v. State*.<sup>19</sup> In *Gridine*, the First District Court of Appeal held 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 holding that *Graham* does not prohibit a lengthy term of years. The Court has not issued an opinion in either case at this time.

### ***Miller v. Alabama***

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<sup>10</sup> "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 May 5, 2014).

<sup>11</sup> "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 May 5, 2014).

<sup>12</sup> *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.

<sup>13</sup> *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.

<sup>14</sup> *Adams v. State*, 2012 WL 3193932 (Fla. 1st DCA 2012). 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 DCA 2012).

<sup>15</sup> See *Walle v. State*, 99 So.3d 967, 971 (Fla. 1st DCA 2012)(Court held that the express 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.)

<sup>16</sup> *Walle*, at 972.

<sup>17</sup> See *Floyd v. State*, 87 So.3d 45, 47 (Fla. 1st DCA 2012); *Adams*, at 2.

<sup>18</sup> See *Walle*, at 967 (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 (Fla. 5th DCA 2012) (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 8<sup>th</sup> Amendment.).

<sup>19</sup> Florida Supreme Court case numbers SC12-1223 and SC12-578, respectively.

In 2012, the United States Supreme Court held in *Miller v. Alabama* that the 8th Amendment of the U.S. Constitution<sup>20</sup> prohibits a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders.<sup>21</sup> *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.<sup>22</sup> The Court’s opinion stated:

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.<sup>23,24</sup>

Florida’s District Courts of Appeal disagree on whether *Miller* applies retroactively to juveniles whose cases were considered to be final at the time *Miller* was rendered. The First and Third District Courts have held that *Miller* does not apply retroactively<sup>25</sup> as the ruling is not a “development of fundamental significance.”<sup>26</sup> However, on January 22, 2014, the Second District Court held in *Toye v. State*,<sup>27</sup> that by creating a “constitutionally meaningful sentencing hearing” that did not previously exist, *Miller* cannot be “characterized as mere evolutionarily refinement in criminal procedure,” and should be applied retroactively. This issue was certified to the Florida Supreme Court as a question of public importance in *Falcon v. State*.<sup>28</sup> Oral arguments were held on March 6, 2014.

## **Effect of the Bill**

### **Penalties**

The bill amends s. 775.082, F.S., *requiring* a court to sentence a juvenile offender who is convicted of a homicide offense<sup>29</sup> that is a capital felony or an offense that was reclassified as a capital felony (capital felony homicide) and where the person actually killed, intended to kill, or attempted to kill the victim to:

- Life imprisonment, if, after conducting a sentencing hearing in accordance with the newly created s. 921.1401, F.S., the court concludes that life imprisonment is an appropriate sentence; or
- A term of imprisonment of not less than 40 years, if the judge concludes at the sentencing hearing that life imprisonment is not an appropriate sentence.

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<sup>20</sup> *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 2469.

<sup>23</sup> *Id.* at 2468.

<sup>24</sup> 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.).

<sup>25</sup> *See Geter v. State*, 3D12-1736, 2012 WL 4448860 (Fla. 3d DCA 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).

<sup>26</sup> *See Witt v. State*, 387 So.2d 922 (Fla. 1980).

<sup>27</sup> 2014 WL 228639 (Fla. 2nd DCA 2014).

<sup>28</sup> *Falcon v. State*, 111 So.3d 973 (Fla. 1st DCA 2013); SC13-865.

<sup>29</sup> Section 782.04, F.S., establishes homicide offenses.

The court *may* sentence a juvenile offender to life imprisonment or a term of years equal to life imprisonment, if, after conducting a sentencing hearing in accordance with s. 921.1401, F.S., the court finds such sentence appropriate and the juvenile offender is convicted of a:

- Life or first degree felony homicide where the person actually killed, intended to kill, or attempted to kill the victim;
- Capital, life, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim; or
- Nonhomicide offense.

The bill requires the court to impose a minimum sentence (40 years) only in instances where the court determines that life imprisonment is not appropriate for a juvenile offender convicted of a capital felony homicide where the person actually killed, intended to kill, or attempted to kill the victim.

The bill also provides that all juvenile offenders are entitled to have their sentence reviewed by the court of original jurisdiction after specified periods of imprisonment. However, a juvenile offender convicted of a capital felony homicide, where the person actually killed, intended to kill, or attempted to kill the victim, is not entitled to review if he or she has previously been convicted of a list of enumerated offenses, or conspiracy to commit one of the enumerated offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence for the capital felony homicide.

#### Sentencing Proceedings for Juvenile Offenders Sentenced to Life Imprisonment

The bill creates s. 921.1401, F.S., which authorizes the court to conduct a separate sentencing hearing to determine whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence for a juvenile offender convicted of one of the above-described homicide or nonhomicide offenses that was committed on or after July 1, 2014. When determining whether such sentence is appropriate, the court 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.

This sentencing hearing is mandatory when sentencing any juvenile offender for a capital felony homicide offense where the offender actually killed, intended to kill, or attempted to kill the victim. The hearing is not required in any of the other above-described offenses, but must be conducted before the court can impose a sentence of life imprisonment or a term of years equal to life imprisonment.

#### Sentence Review Proceedings

The bill creates s. 921.1402, F.S., which entitles certain juvenile offenders to a review of his or her sentence by the court of original jurisdiction after specified periods of time. The sentence review hearing is to determine whether the juvenile offender has been rehabilitated and is deemed fit to re-enter society. "Juvenile offender" is defined to mean a person sentenced to imprisonment in the custody of the Department of Corrections (DOC) for an offense committed on or after July 1, 2014, and committed before he or she was 18 years of age.

A juvenile offender convicted of a capital felony homicide offense where the person actually killed, intended to kill, or attempted to kill the victim (s. 775.082(1)(b)1., F.S.) is entitled to a sentence review hearing after 25 years. However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence under s. 775.082(1)(b)1., F.S.:

- Murder;
- Manslaughter;
- Sexual battery;
- Armed burglary;
- Armed robbery;
- Armed carjacking;
- Home-invasion robbery;
- Human trafficking for commercial sexual activity with a child under 18 years of age;
- False imprisonment under s. 787.02(3)(a), F.S.; or
- Kidnapping.

A juvenile offender convicted of a life felony or first degree felony homicide offense where the person actually killed, intended to kill, or attempted to kill the victim, is entitled to a sentence review hearing after 25 years, if he or she is sentenced to a term of imprisonment for more than 25 years.

A juvenile offender convicted of a capital felony, life felony, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim is entitled to have the court review the sentence after 15 years, if he or she is sentenced to a term of imprisonment of more than 15 years.

A juvenile offender convicted of a nonhomicide offense is entitled to have the court review the sentence after 20 years if the juvenile is sentenced to a term of imprisonment of more than 20 years. The juvenile offender is eligible for one subsequent review hearing 10 years after the initial review hearing.

The juvenile offender must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. DOC must notify a juvenile offender of his or her eligibility to request a sentencing review hearing 18 months before the juvenile offender becomes entitled to such review. Additionally, an eligible juvenile offender is entitled to be represented by counsel at the sentence review hearing, including a court appointed public defender, if the juvenile offender cannot afford an attorney.

The bill requires the original sentencing court to consider any factor it deems appropriate during the sentence review hearing, including all of the following:

- Whether the offender demonstrates maturity and rehabilitation;
- Whether the offender remains at the same level of risk to society as he or she did at the time of the initial sentencing;
- The opinion of the victim or the victim's next of kin;<sup>30</sup>
- 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;

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<sup>30</sup> The bill further states that the absence of the victim or the victim's next of kin from the resentencing hearing may not be a factor in the court's determination. The victim or victim's next of kin is authorized to appear in person, in writing, or by electronic means. Additionally, if the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentence review hearings.

- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available;
- Whether the offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense; and
- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.

If a court, after conducting a sentence review hearing, finds that the juvenile offender has been rehabilitated and is reasonably fit to reenter society, the court must modify the offender's sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court must issue an order in writing stating the reasons why the sentence is not being modified.

## 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 3, 2014, the Criminal Justice Impact Conference determined that HB 7035 will have no prison bed impact on the Department of Corrections.

The Office of State Courts Administrators (OSCA) determined the bill will result in an increase in judicial and court system workload.<sup>31</sup> However, the precise impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in workload.<sup>32</sup>

### 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.

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<sup>31</sup> Office of the State Courts Administrator, Analysis of HB 7035 (on file with the Criminal Justice Subcommittee).

<sup>32</sup> *Id.*

