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CS/HB 7035, Engrossed 2

2014 Legislature

1  
2 An act relating to juvenile sentencing; amending s.  
3 775.082, F.S.; providing criminal penalties applicable  
4 to a juvenile offender for certain serious felonies;  
5 requiring a judge to consider specified factors before  
6 determining if life imprisonment is an appropriate  
7 sentence for a juvenile offender convicted of certain  
8 offenses; providing review of sentences for specified  
9 juvenile offenders; creating s. 921.1401, F.S.;  
10 providing sentencing proceedings for determining if  
11 life imprisonment is an appropriate sentence for a  
12 juvenile offender convicted of certain offenses;  
13 providing certain factors a judge shall consider when  
14 determining if life imprisonment is appropriate for a  
15 juvenile offender; creating s. 921.1402, F.S.;  
16 defining the term "juvenile offender"; providing  
17 sentence review proceedings to be conducted after a  
18 specified period of time by the original sentencing  
19 court for juvenile offenders convicted of certain  
20 offenses; providing for subsequent reviews; requiring  
21 the Department of Corrections to notify a juvenile  
22 offender of his or her eligibility to participate in  
23 sentence review hearings; entitling a juvenile  
24 offender to be represented by counsel; providing  
25 factors that must be considered by the court in the



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26 sentence review; requiring the court to modify a  
27 juvenile offender's sentence if certain factors are  
28 found; requiring the court to impose a term of  
29 probation for any sentence modified; requiring the  
30 court to make written findings if the court declines  
31 to modify a juvenile offender's sentence; amending ss.  
32 316.3026, 373.430, 403.161, and 648.571, F.S.;  
33 conforming cross-references; providing an effective  
34 date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Subsections (1) and (3) of section 775.082,  
39 Florida Statutes, are amended to read:

40 775.082 Penalties; applicability of sentencing structures;  
41 mandatory minimum sentences for certain reoffenders previously  
42 released from prison.-

43 (1) (a) Except as provided in paragraph (b), a person who  
44 has been convicted of a capital felony shall be punished by  
45 death if the proceeding held to determine sentence according to  
46 the procedure set forth in s. 921.141 results in findings by the  
47 court that such person shall be punished by death, otherwise  
48 such person shall be punished by life imprisonment and shall be  
49 ineligible for parole.

50 (b)1. A person who actually killed, intended to kill, or



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51 attempted to kill the victim and who is convicted under s.  
52 782.04 of a capital felony, or an offense that was reclassified  
53 as a capital felony, which was committed before the person  
54 attained 18 years of age shall be punished by a term of  
55 imprisonment for life if, after a sentencing hearing conducted  
56 by the court in accordance with s. 921.1401, the court finds  
57 that life imprisonment is an appropriate sentence. If the court  
58 finds that life imprisonment is not an appropriate sentence,  
59 such person shall be punished by a term of imprisonment of at  
60 least 40 years. A person sentenced pursuant to this subparagraph  
61 is entitled to a review of his or her sentence in accordance  
62 with s. 921.1402(2)(a).

63 2. A person who did not actually kill, intend to kill, or  
64 attempt to kill the victim and who is convicted under s. 782.04  
65 of a capital felony, or an offense that was reclassified as a  
66 capital felony, which was committed before the person attained  
67 18 years of age may be punished by a term of imprisonment for  
68 life or by a term of years equal to life if, after a sentencing  
69 hearing conducted by the court in accordance with s. 921.1401,  
70 the court finds that life imprisonment is an appropriate  
71 sentence. A person who is sentenced to a term of imprisonment of  
72 more than 15 years is entitled to a review of his or her  
73 sentence in accordance with s. 921.1402(2)(c).

74 3. The court shall make a written finding as to whether a  
75 person is eligible for a sentence review hearing under s.



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76 | 921.1402(2)(a) or (2)(c). Such a finding shall be based upon  
77 | whether the person actually killed, intended to kill, or  
78 | attempted to kill the victim. The court may find that multiple  
79 | defendants killed, intended to kill, or attempted to kill the  
80 | victim.

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

83 | (a)1. For a life felony committed before ~~prior to~~ October  
84 | 1, 1983, by a term of imprisonment for life or for a term of at  
85 | least ~~years not less than~~ 30 years.

86 | 2. For a life felony committed on or after October 1,  
87 | 1983, by a term of imprisonment for life or by a term of  
88 | imprisonment not exceeding 40 years.

89 | 3. Except as provided in subparagraph 4., for a life  
90 | felony committed on or after July 1, 1995, by a term of  
91 | imprisonment for life or by imprisonment for a term of years not  
92 | exceeding life imprisonment.

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

96 | (I) A term of imprisonment for life; or

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



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101           b. For a life felony committed on or after July 1, 2008,  
102 which is a person's second or subsequent violation of s.  
103 800.04(5)(b), by a term of imprisonment for life.

104           5. Notwithstanding subparagraphs 1.-4., a person who is  
105 convicted under s. 782.04 of an offense that was reclassified as  
106 a life felony which was committed before the person attained 18  
107 years of age may be punished by a term of imprisonment for life  
108 or by a term of years equal to life imprisonment if the judge  
109 conducts a sentencing hearing in accordance with s. 921.1401 and  
110 finds that life imprisonment or a term of years equal to life  
111 imprisonment is an appropriate sentence.

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

116           b. A person who did not actually kill, intend to kill, or  
117 attempt to kill the victim and is sentenced to a term of  
118 imprisonment of more than 15 years is entitled to a review of  
119 his or her sentence in accordance with s. 921.1402(2)(c).

120           c. The court shall make a written finding as to whether a  
121 person is eligible for a sentence review hearing under s.  
122 921.1402(2)(b) or (2)(c). Such a finding shall be based upon  
123 whether the person actually killed, intended to kill, or  
124 attempted to kill the victim. The court may find that multiple  
125 defendants killed, intended to kill, or attempted to kill the



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126 victim.

127 (b)1. For a felony of the first degree, by a term of  
128 imprisonment not exceeding 30 years or, when specifically  
129 provided by statute, by imprisonment for a term of years not  
130 exceeding life imprisonment.

131 2. Notwithstanding subparagraph 1., a person convicted  
132 under s. 782.04 of a first-degree felony punishable by a term of  
133 years not exceeding life imprisonment, or an offense that was  
134 reclassified as a first degree felony punishable by a term of  
135 years not exceeding life, which was committed before the person  
136 attained 18 years of age may be punished by a term of years  
137 equal to life imprisonment if the judge conducts a sentencing  
138 hearing in accordance with s. 921.1401 and finds that a term of  
139 years equal to life imprisonment is an appropriate sentence.

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

144 b. A person who did not actually kill, intend to kill, or  
145 attempt to kill the victim and is sentenced to a term of  
146 imprisonment of more than 15 years is entitled to a review of  
147 his or her sentence in accordance with s. 921.1402(2)(c).

148 c. The court shall make a written finding as to whether a  
149 person is eligible for a sentence review hearing under s.  
150 921.1402(2)(b) or (2)(c). Such a finding shall be based upon



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151 whether the person actually killed, intended to kill, or  
152 attempted to kill the victim. The court may find that multiple  
153 defendants killed, intended to kill, or attempted to kill the  
154 victim.

155 (c) Notwithstanding paragraphs (a) and (b), a person  
156 convicted of an offense that is not included in s. 782.04 but  
157 that is an offense that is a life felony or is punishable by a  
158 term of imprisonment for life or by a term of years not  
159 exceeding life imprisonment, or an offense that was reclassified  
160 as a life felony or an offense punishable by a term of  
161 imprisonment for life or by a term of years not exceeding life  
162 imprisonment, which was committed before the person attained 18  
163 years of age may be punished by a term of imprisonment for life  
164 or a term of years equal to life imprisonment if the judge  
165 conducts a sentencing hearing in accordance with s. 921.1401 and  
166 finds that life imprisonment or a term of years equal to life  
167 imprisonment is an appropriate sentence. A person who is  
168 sentenced to a term of imprisonment of more than 20 years is  
169 entitled to a review of his or her sentence in accordance with  
170 s. 921.1402(2)(d).

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

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

175 Section 2. Section 921.1401, Florida Statutes, is created



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176 to read:

177 921.1401 Sentence of life imprisonment for persons who are  
178 under the age of 18 years at the time of the offense; sentencing  
179 proceedings.-

180 (1) Upon conviction or adjudication of guilt of an offense  
181 described in s. 775.082(1)(b), s. 775.082(3)(a)5., s.  
182 775.082(3)(b)2., or s. 775.082(3)(c) which was committed on or  
183 after July 1, 2014, the court may conduct a separate sentencing  
184 hearing to determine if a term of imprisonment for life or a  
185 term of years equal to life imprisonment is an appropriate  
186 sentence.

187 (2) In determining whether life imprisonment or a term of  
188 years equal to life imprisonment is an appropriate sentence, the  
189 court shall consider factors relevant to the offense and the  
190 defendant's youth and attendant circumstances, including, but  
191 not limited to:

192 (a) The nature and circumstances of the offense committed  
193 by the defendant.

194 (b) The effect of the crime on the victim's family and on  
195 the community.

196 (c) The defendant's age, maturity, intellectual capacity,  
197 and mental and emotional health at the time of the offense.

198 (d) The defendant's background, including his or her  
199 family, home, and community environment.

200 (e) The effect, if any, of immaturity, impetuosity, or





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201 failure to appreciate risks and consequences on the defendant's  
202 participation in the offense.

203 (f) The extent of the defendant's participation in the  
204 offense.

205 (g) The effect, if any, of familial pressure or peer  
206 pressure on the defendant's actions.

207 (h) The nature and extent of the defendant's prior  
208 criminal history.

209 (i) The effect, if any, of characteristics attributable to  
210 the defendant's youth on the defendant's judgment.

211 (j) The possibility of rehabilitating the defendant.

212 Section 3. Section 921.1402, Florida Statutes, is created  
213 to read:

214 921.1402 Review of sentences for persons convicted of  
215 specified offenses committed while under the age of 18 years.—

216 (1) For purposes of this section, the term "juvenile  
217 offender" means a person sentenced to imprisonment in the  
218 custody of the Department of Corrections for an offense  
219 committed on or after July 1, 2014, and committed before he or  
220 she attained 18 years of age.

221 (2) (a) A juvenile offender sentenced under s.  
222 775.082(1)(b)1. is entitled to a review of his or her sentence  
223 after 25 years. However, a juvenile offender is not entitled to  
224 review if he or she has previously been convicted of one of the  
225 following offenses, or conspiracy to commit one of the following



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226 | offenses, if the offense for which the person was previously  
227 | convicted was part of a separate criminal transaction or episode  
228 | than that which resulted in the sentence under s.  
229 | 775.082(1)(b)1.:  
230 |     1. Murder;  
231 |     2. Manslaughter;  
232 |     3. Sexual battery;  
233 |     4. Armed burglary;  
234 |     5. Armed robbery;  
235 |     6. Armed carjacking;  
236 |     7. Home-invasion robbery;  
237 |     8. Human trafficking for commercial sexual activity with a  
238 | child under 18 years of age;  
239 |     9. False imprisonment under s. 787.02(3)(a); or  
240 |     10. Kidnapping.  
241 |     (b) A juvenile offender sentenced to a term of more than  
242 | 25 years under s. 775.082(3)(a)5.a. or s. 775.082(3)(b)2.a. is  
243 | entitled to a review of his or her sentence after 25 years.  
244 |     (c) A juvenile offender sentenced to a term of more than  
245 | 15 years under s. 775.082(1)(b)2., s. 775.082(3)(a)5.b., or s.  
246 | 775.082(3)(b)2.b. is entitled to a review of his or her sentence  
247 | after 15 years.  
248 |     (d) A juvenile offender sentenced to a term of 20 years or  
249 | more under s. 775.082(3)(c) is entitled to a review of his or  
250 | her sentence after 20 years. If the juvenile offender is not



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251 resentenced at the initial review hearing, he or she is eligible  
252 for one subsequent review hearing 10 years after the initial  
253 review hearing.

254 (3) The Department of Corrections shall notify a juvenile  
255 offender of his or her eligibility to request a sentence review  
256 hearing 18 months before the juvenile offender is entitled to a  
257 sentence review hearing under this section.

258 (4) A juvenile offender seeking sentence review pursuant  
259 to subsection (2) must submit an application to the court of  
260 original jurisdiction requesting that a sentence review hearing  
261 be held. The juvenile offender must submit a new application to  
262 the court of original jurisdiction to request subsequent  
263 sentence review hearings pursuant to paragraph (2) (d). The  
264 sentencing court shall retain original jurisdiction for the  
265 duration of the sentence for this purpose.

266 (5) A juvenile offender who is eligible for a sentence  
267 review hearing under this section is entitled to be represented  
268 by counsel, and the court shall appoint a public defender to  
269 represent the juvenile offender if the juvenile offender cannot  
270 afford an attorney.

271 (6) Upon receiving an application from an eligible  
272 juvenile offender, the court of original sentencing jurisdiction  
273 shall hold a sentence review hearing to determine whether the  
274 juvenile offender's sentence should be modified. When  
275 determining if it is appropriate to modify the juvenile



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276 offender's sentence, the court shall consider any factor it  
277 deems appropriate, including all of the following:

278 (a) Whether the juvenile offender demonstrates maturity  
279 and rehabilitation.

280 (b) Whether the juvenile offender remains at the same  
281 level of risk to society as he or she did at the time of the  
282 initial sentencing.

283 (c) The opinion of the victim or the victim's next of kin.  
284 The absence of the victim or the victim's next of kin from the  
285 sentence review hearing may not be a factor in the determination  
286 of the court under this section. The court shall permit the  
287 victim or victim's next of kin to be heard, in person, in  
288 writing, or by electronic means. If the victim or the victim's  
289 next of kin chooses not to participate in the hearing, the court  
290 may consider previous statements made by the victim or the  
291 victim's next of kin during the trial, initial sentencing phase,  
292 or subsequent sentencing review hearings.

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

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

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



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301 | (g) Whether the juvenile offender has successfully  
302 | obtained a general educational development certificate or  
303 | completed another educational, technical, work, vocational, or  
304 | self-rehabilitation program, if such a program is available.

305 | (h) Whether the juvenile offender was a victim of sexual,  
306 | physical, or emotional abuse before he or she committed the  
307 | offense.

308 | (i) The results of any mental health assessment, risk  
309 | assessment, or evaluation of the juvenile offender as to  
310 | rehabilitation.

311 | (7) If the court determines at a sentence review hearing  
312 | that the juvenile offender has been rehabilitated and is  
313 | reasonably believed to be fit to reenter society, the court  
314 | shall modify the sentence and impose a term of probation of at  
315 | least 5 years. If the court determines that the juvenile  
316 | offender has not demonstrated rehabilitation or is not fit to  
317 | reenter society, the court shall issue a written order stating  
318 | the reasons why the sentence is not being modified.

319 | Section 4. Subsection (2) of section 316.3026, Florida  
320 | Statutes, is amended to read:

321 | 316.3026 Unlawful operation of motor carriers.—

322 | (2) Any motor carrier enjoined or prohibited from  
323 | operating by an out-of-service order by this state, any other  
324 | state, or the Federal Motor Carrier Safety Administration may  
325 | not operate on the roadways of this state until the motor



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326 carrier has been authorized to resume operations by the  
327 originating enforcement jurisdiction. Commercial motor vehicles  
328 owned or operated by any motor carrier prohibited from operation  
329 found on the roadways of this state shall be placed out of  
330 service by law enforcement officers of the Department of Highway  
331 Safety and Motor Vehicles, and the motor carrier assessed a  
332 \$10,000 civil penalty pursuant to 49 C.F.R. s. 383.53, in  
333 addition to any other penalties imposed on the driver or other  
334 responsible person. Any person who knowingly drives, operates,  
335 or causes to be operated any commercial motor vehicle in  
336 violation of an out-of-service order issued by the department in  
337 accordance with this section commits a felony of the third  
338 degree, punishable as provided in s. 775.082(3)(e)  
339 ~~775.082(3)(d)~~. Any costs associated with the impoundment or  
340 storage of such vehicles are the responsibility of the motor  
341 carrier. Vehicle out-of-service orders may be rescinded when the  
342 department receives proof of authorization for the motor carrier  
343 to resume operation.

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

346 373.430 Prohibitions, violation, penalty, intent.—

347 (3) Any person who willfully commits a violation specified  
348 in paragraph (1)(a) is guilty of a felony of the third degree,  
349 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
350 775.083(1)(g), by a fine of not more than \$50,000 or by



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351 | imprisonment for 5 years, or by both, for each offense. Each day  
352 | during any portion of which such violation occurs constitutes a  
353 | separate offense.

354 |       Section 6. Subsection (3) of section 403.161, Florida  
355 | Statutes, is amended to read:

356 |       403.161 Prohibitions, violation, penalty, intent.—

357 |       (3) Any person who willfully commits a violation specified  
358 | in paragraph (1)(a) is guilty of a felony of the third degree  
359 | punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
360 | 775.083(1)(g) by a fine of not more than \$50,000 or by  
361 | imprisonment for 5 years, or by both, for each offense. Each day  
362 | during any portion of which such violation occurs constitutes a  
363 | separate offense.

364 |       Section 7. Paragraph (c) of subsection (3) of section  
365 | 648.571, Florida Statutes, is amended to read:

366 |       648.571 Failure to return collateral; penalty.—

367 |       (3)

368 |       (c) Allowable expenses incurred in apprehending a  
369 | defendant because of a bond forfeiture or judgment under s.  
370 | 903.29 may be deducted if such expenses are accounted for. The  
371 | failure to return collateral under these terms is punishable as  
372 | follows:

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

375 |       2. If the collateral is of a value of \$100 or more, as



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376 provided in s. 775.082(3)(e) ~~775.082(3)(d)~~.

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

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

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