

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>    </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Schwartz offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:  
 6 Section 1. Subsections (1) and (3) of section 775.082, Florida  
 7 Statutes, are amended to read:

8 775.082 Penalties; applicability of sentencing structures;  
 9 mandatory minimum sentences for certain reoffenders previously  
 10 released from prison.—

11 (1) (a) Except as provided in paragraph (b), a person who  
 12 has been convicted of a capital felony shall be punished by  
 13 death if the proceeding held to determine sentence according to  
 14 the procedure set forth in s. 921.141 results in findings by the  
 15 court that such person shall be punished by death, otherwise  
 16 such person shall be punished by life imprisonment and shall be  
 17 ineligible for parole.

18 (b) A person who is convicted of a capital felony, or an  
 19 offense that was reclassified as a capital felony, that was  
 20 committed before the person was 18 years of age may be punished

Amendment No. 3

21 by life in prison, if such a sentence is authorized for the  
22 offense if the judge at a mandatory sentencing hearing concludes  
23 that life imprisonment is an appropriate sentence. In  
24 determining whether life imprisonment is an appropriate  
25 sentence, the judge shall consider factors relevant to the  
26 offense and to the defendant's youth and attendant  
27 circumstances, including, but not limited to, the following:

28 1. The effect of the crime on the victim's family and on  
29 the community.

30 2. The nature and circumstances of the offense committed  
31 by the defendant.

32 3. The defendant's age, maturity, intellectual capacity,  
33 and mental and emotional health at the time of the offense.

34 4. The defendant's background, including his or her  
35 family, home, and community environment.

36 5. The effect, if any, of immaturity, impetuosity, or  
37 failure to appreciate risks and consequences on the defendant's  
38 participation in the offense.

39 6. The extent of the defendant's participation in the  
40 offense.

41 7. The effect, if any, of familiar pressure or peer  
42 pressure on the defendant's actions.

43 8. The nature and extent of the defendant's prior criminal  
44 history.

45 9. The effect, if any, of characteristics attributable to  
46 the defendant's youth on the defendant's judgment.

47 10. The defendant's capacity for rehabilitation.  
48

Amendment No. 3

49 If the judge concludes that life imprisonment is not an  
50 appropriate sentence, the defendant shall be punished by  
51 imprisonment for a term of not less than 50 years. This  
52 paragraph shall apply retroactively to the extent necessary to  
53 meet constitutional requirements for imposing a life sentence on  
54 a defendant who is convicted of committing a murder that  
55 occurred before the defendant was 18 years of age as set forth  
56 by the United States Supreme Court in Miller v. Alabama, 132 S.  
57 Ct. 2455 (2012)

58 (c)1. A person who is sentenced under paragraph (b) shall  
59 have his or her sentence reviewed after 25 years. The sentencing  
60 court shall retain original jurisdiction for the duration of the  
61 sentence for this purpose. The Department of Corrections shall  
62 notify juvenile offenders who are committed to the department of  
63 their eligibility to participate in a resentencing hearing 18  
64 months prior to the beginning of their 25<sup>th</sup> year of  
65 incarceration. The juvenile offender may apply to the court of  
66 original jurisdiction requesting that a resentencing hearing be  
67 held.

68 2. A juvenile offender is entitled to be represented by  
69 counsel, and the court shall appoint a public defender to  
70 represent the juvenile offender if the juvenile cannot afford an  
71 attorney.

72 3. The court shall hold a resentencing hearing to  
73 determine whether the juvenile offender's sentence should be  
74 modified. The resentencing court shall consider all of the  
75 following:

## Amendment No. 3

76 a. Whether the juvenile offender demonstrates maturity and  
77 rehabilitation.

78 b. Whether the juvenile offender remains at the same level  
79 of risk to society as he or she did at the time of the initial  
80 sentencing.

81 c. The opinion of the victim's next of kin. The absence of  
82 the victim's next of kin from the resentencing hearing may not  
83 be a factor in the courts determination under this section.

84 d. Whether the juvenile offender was a relatively minor  
85 participant in the criminal offense or acted under extreme  
86 duress or the domination of another person.

87 e. Whether the juvenile has shown sincere and sustained  
88 remorse for the criminal offense.

89 f. Whether the juvenile offender's age, maturity, and  
90 psychological development at the time of the offense affected  
91 his or her behavior.

92 g. Whether the juvenile offender has successfully obtained  
93 a general educational development certificate or completed  
94 another educational, technical, work, vocational, or self-  
95 rehabilitation program.

96 h. Whether the juvenile offender was a victim of sexual,  
97 physical, or emotional abuse before he or she committed the  
98 offense.

99 i. The results of any mental health assessment, risk  
100 assessment, or evaluation of the juvenile offender as to  
101 rehabilitation.

102 4. If the court determines at the resentencing hearing  
103 that the juvenile offender has been rehabilitated and is

Amendment No. 3

104 reasonably believed to be fit to reenter society based on these  
105 factors, then a term of probation of at least 5 years, shall be  
106 imposed. If the court determines that the juvenile offender has  
107 not demonstrated rehabilitation and is not fit to reenter  
108 society based on these factors, the court shall issue an order  
109 in writing stating why the sentence is not being modified.

110 5. A juvenile offender who is not resentenced under this  
111 paragraph at the initial resentencing hearing is eligible for a  
112 resentencing hearing every 5 years after the date of the denial  
113 and every 5 years after that.

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

116 (a)1. For a life felony committed before prior to October  
117 1, 1983, by a term of imprisonment for life or for a term of  
118 years not less than 30.

119 2. For a life felony committed on or after October 1,  
120 1983, by a term of imprisonment for life or by a term of  
121 imprisonment not exceeding 40 years.

122 3. Except as provided in subparagraph 4., for a life  
123 felony committed on or after July 1, 1995, by a term of  
124 imprisonment for life or by imprisonment for a term of years not  
125 exceeding life imprisonment.

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

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

130 (II) A split sentence that is a term of not less than 25  
131 years' imprisonment and not exceeding life imprisonment,

Amendment No. 3

132 followed by probation or community control for the remainder of  
133 the person's natural life, as provided in s. 948.012(4).

134 b. For a life felony committed on or after July 1, 2008,  
135 which is a person's second or subsequent violation of s.  
136 800.04(5)(b), by a term of imprisonment for life.

137 5.a. A person convicted of a life felony or an offense  
138 punishable by a term of years not exceeding life imprisonment,  
139 other than an offense listed in 782.04, or an offense, other  
140 than offense listed in 782.04 that was reclassified as a life  
141 felony or an offense punishable by a term of years not exceeding  
142 life, that was committed before the person was 18 years of age  
143 shall be punished by a term of imprisonment not to exceed 50  
144 years. This paragraph shall apply retroactively to the extent  
145 necessary to meet constitutional requirements as set forth by  
146 the United States Supreme Court in Graham v. Florida, 560 US.  
147 (2010).

148 b. A person sentenced under paragraph (a) shall have his  
149 or her sentence reviewed after 15 years. The sentencing court  
150 shall retain original jurisdiction for the duration of the  
151 sentence for the purpose. The Department of Corrections shall  
152 notify juvenile offenders who are committed to the department of  
153 their eligibility to participate in a resentencing hearing 18  
154 months prior to the beginning of their 15<sup>th</sup> year of  
155 incarceration. The juvenile offender may apply to the court of  
156 original jurisdiction requesting that a resentencing hearing be  
157 held. This section does not apply to those sentenced to a term  
158 of 15 years or less.

Amendment No. 3

159 6. A juvenile offender is entitled to be represented by  
160 counsel, and the court shall appoint a public defender to  
161 represent the juvenile offender if the juvenile offender cannot  
162 afford an attorney.

163 7. The court shall hold a resentencing hearing to  
164 determine whether the juvenile offender's sentence should be  
165 modified. The resentencing court shall consider all of the  
166 following:

167 a. Whether the juvenile offender demonstrates maturity and  
168 rehabilitation.

169 b. Whether the juvenile offender remains at the same level  
170 of risk to society as he or she did at the time of the initial  
171 sentencing.

172 c. The opinion of the victim or the victim,'s next of kin.  
173 The absence of the victim or the victim's next of kin from the  
174 resentencing hearing may not be a factor in the court's  
175 determination under this section.

176 d. Whether the juvenile offender was a relatively minor  
177 participant in the criminal offense or acted under extreme  
178 duress or the domination of another person.

179 e. Whether the juvenile has shown sincere and sustained  
180 remorse for the criminal offense.

181 f. Whether the juvenile offender's age, maturity, and  
182 psychological development at the time of the offense affected  
183 his or her behavior.

184 g. Whether the juvenile offender has successfully obtained  
185 a general educational development certificate or completed

Amendment No. 3

186 another educational, technical, work, vocational, or self-  
187 rehabilitation program.

188 h. Whether the juvenile offender was a victim of sexual,  
189 physical, or emotional abuse before he or she committed the  
190 offense.

191 i. The results of any mental health assessment, risk  
192 assessment, or evaluation of the juvenile offender as to  
193 rehabilitation.

194 8. If the court determines at the resentencing hearing  
195 that the juvenile offender has been rehabilitated and is  
196 reasonably believed to be fit to reenter society based on these  
197 factors, then a term of probation of at least 5 years, shall be  
198 imposed. If the court determines that the juvenile offender has  
199 not demonstrated rehabilitation and is not fit to reenter  
200 society based on these factors, the court shall issue an order  
201 in writing stating why the sentence is not being modified.

202 9. A juvenile offender who is not resentenced under this  
203 paragraph at the initial resentencing hearing is eligible for a  
204 resentencing hearing 5 years after the date of the denial and  
205 every 5 years after that.

206 (b) For a felony of the first degree, by a term of  
207 imprisonment not exceeding 30 years or, when specifically  
208 provided by statute, by imprisonment for a term of years not  
209 exceeding life imprisonment.

210 (c) For a felony of the second degree, by a term of  
211 imprisonment not exceeding 15 years.

212 (d) For a felony of the third degree, by a term of  
213 imprisonment not exceeding 5 years.



Amendment No. 3

214 Section 2. This act shall take effect July 1, 2013.  
215  
216  
217

218 -----

219 **T I T L E A M E N D M E N T**

220 Remove everything before the enacting clause and insert:

221 An act relating to juvenile sentencing; amending s. 775.082,  
222 F.S.; providing sentencing alternatives for offenses committed  
223 by minors who would otherwise only be punishable by life in  
224 prison; authorizing life sentences if specified factors are  
225 considered; providing that certain offenses committed after a  
226 specified date punishable by a term of years not exceeding life  
227 imprisonment by an offender who was younger than 18 years of age  
228 at the time of the offense are punishable by terms of  
229 imprisonment not exceeding specified numbers of years; providing  
230 for a review after a specified number of years of the sentence  
231 of a juvenile sentenced to life; providing for eligibility  
232 screening; providing for a hearing; providing factors for  
233 consideration; providing for modification of sentence; providing  
234 for future review hearings for juveniles who are not  
235 resentenced; providing an effective date.