

CS/SB 548 by **CJ, Simmons**; (Similar to H 0451) Bullying

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SB 384 by **Bradley**; (Compare to H 7035) Juvenile Sentencing

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND
CIVIL JUSTICE
Senator Bradley, Chair
Senator Joyner, Vice Chair

MEETING DATE: Wednesday, March 5, 2014

TIME: 9:00 —10:30 a.m.

PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Bradley, Chair; Senator Joyner, Vice Chair; Senators Altman, Braynon, Clemens, Dean, Diaz de la Portilla, Flores, Garcia, Grimsley, Hays, Smith, and Soto

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 548 Criminal Justice / Simmons (Similar H 451)	Bullying; Providing that a person who willfully, maliciously, and repeatedly harasses or cyberbullies another person commits the offense of bullying, etc. CJ 02/10/2014 Fav/CS ACJ 03/05/2014 AP	
2	SB 384 Bradley (Compare H 7035)	Juvenile Sentencing; Providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring a judge to consider certain factors before determining if life imprisonment is an appropriate sentence for a homicide defendant; providing for review of sentences of certain offenders who were under the age of 18 at the time of the offense, etc. CJ 01/08/2014 Favorable JU 02/04/2014 Favorable ACJ 03/05/2014 AP	
3	Update on inmate release policies and procedures by the Department of Corrections, Clerks of Court, and Florida Department of Law Enforcement		
Presentation on Agency's Fiscal Year 2014-2015 Budget Recommendations for:			
Guardian Ad Litem			
Regional Conflict Counsels			
Capital Collateral Regional Counsels			
Justice Administrative Commission			
Other Related Meeting Documents			

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 548

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Bullying

DATE: March 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 548 creates a criminal statute penalizing bullying and aggravated bullying. The newly created statute provides a second degree misdemeanor penalty¹ for bullying and a first degree misdemeanor penalty² for aggravated bullying. Cyberbullying is included in each new crime. The elements of these two new offenses and the definitions provided in the bill are the same as the elements and definitions in the stalking statute (found to be constitutional by the Florida Supreme Court in 1995).

The Criminal Justice Impact Conference has determined that the bill will have an insignificant impact on the need for prison beds.

II. Present Situation:

Bullying Statute

Florida law requires each district school board to adopt a policy prohibiting bullying and harassment in district schools.³ Violation of these policies can result in school disciplinary actions being taken. Among other things, the law prohibits the bullying or harassment of any public K-12 student or employee:

¹ Punishable by up to 60 days in jail and a potential fine up to \$500. Sections 75.082 and 775.083, F.S.

² Punishable by up to one year in jail and a potential fine up to \$1,000. Sections 775.082 and 775.083, F.S.

³ Section 1006.147, F.S.

- During a public K-12 education program or activity;
- During a school-related or school-sponsored program or activity;
- On a public K-12 school bus;
- Through a computer, computer system, or computer network that is within the scope of a public K-12 educational institution;
- Through the use of data or computer software accessed at a nonschool-related location or through the use of electronic device technology or electronic devices not owned, leased, or used by a public school or school district, if it substantially interferes with or limits the victim's ability to participate or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school.⁴

The law defines "bullying" as:

- Systematically and chronically inflicting physical hurt or psychological distress on one or more students, which may involve teasing;
- Social exclusion;
- Threat;
- Intimidation;
- Stalking;
- Physical violence;
- Theft;
- Sexual, religious, or racial harassment;
- Public humiliation; or
- Destruction of property.

The statute includes "cyberbullying" as a form of bullying, and defines it as bullying through:

- Use of specified technology or electronic communications;
- Creation of a webpage or weblog in which the creator assumes the identity of another person or the knowing impersonation of another person as the author of posted content or messages; or
- Distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that is accessible to others.⁵

Law enforcement, among other entities, must be involved with the school district in the process of adopting the policies. The policies must include a process to investigate whether a reported act of bullying or harassment is within the scope of a district school system. If it is not, a process for referring such act to the appropriate jurisdiction must be identified. The law also requires a procedure to provide immediate notification to parents and to criminal justice authorities so that actions rising to the level of criminal activity can be referred to the appropriate law enforcement entity for further investigation.⁶

Although Florida's anti-bullying law does not provide criminal penalties for bullying per se, it does provide a process that allows bullying behavior to be investigated and prosecuted by

⁴ Section 1006.147(2), F.S.

⁵ Section 1006.147(3), F.S.

⁶ Section 1006.147(4), F.S.

criminal justice authorities and, if warranted, pursued as another criminal offense. Offenses that are often relating to bullying activity include assault, aggravated assault, battery, aggravated battery, theft, stalking, and aggravated stalking.

Stalking Statute

Florida's stalking law⁷ was upheld by the Florida Supreme Court as constitutional in 1995.⁸ It defines "harass," "course of conduct," "credible threat," and "cyberstalk."⁹ Basically, "harass" means a "course of conduct" (a pattern comprised of a series of acts over a time period, however short, showing a continuity of purpose) directed at a specific person that causes substantial emotional distress to that person and serves no legitimate purpose. "Cyberstalk" means:

"[T]o engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose".

Finally, a "credible threat" is a verbal or nonverbal threat that places a person in reasonable fear for his or his family's safety, made with the apparent ability to carry out the threat.

The stalking statute provides a first degree misdemeanor penalty for stalking¹⁰ and third degree felony penalties for several aggravated stalking offenses.¹¹ The misdemeanor stalking offense occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.¹² One of the aggravated stalking offenses occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person.¹³ The other three aggravated stalking offenses involve this same behavior without a threat being made, but with one of the following circumstances: a victim who is under 16 years of age; the offender being subject to a protective injunction because of repeat violence, sexual violence, dating violence, or domestic violence; or the offender having been convicted of certain sexual offenses and being subject to an order not to have contact with the victim.¹⁴

III. Effect of Proposed Changes:

The bill creates a criminal statute penalizing bullying and aggravated bullying. The newly created statute provides a second degree misdemeanor penalty for bullying and a first degree misdemeanor penalty for aggravated bullying. Cyberbullying is included in each new crime. The second degree misdemeanor bullying offense will occur when a person willfully, maliciously,

⁷ Section 784.048, F.S.

⁸ *Bouters v State*, 659 So.2d 235 (Fla 1995). The Court concluded that the stalking statute was not unconstitutionally overbroad or vague. *Bouters* at 238.

⁹ Section 784.048(1), F.S.

¹⁰ See Footnote 2.

¹¹ Punishable by up to five years in prison and a potential fine up to \$5,000. Sections 775.082, 775.083, and 775.084, F.S.

¹² Section 784.048(2), F.S.

¹³ Section 784.048(3), F.S.

¹⁴ Section 784.048(4), (5), and (7), F.S.

and repeatedly harasses or cyberbullies another person. The aggravated bullying offense will occur when a person willfully, maliciously, and repeatedly harasses or cyberbullies another person and makes a credible threat to that person. The elements of these two new offenses and the definitions provided in the bill are the same as the elements and definitions in the stalking statute.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons convicted of bullying and aggravated bullying under the bill will potentially be subject to a criminal fine of up to \$500 and \$1,000, respectively.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014 and determined that the bill will have an insignificant impact on the need for prison bed space.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 784.049 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on February 10, 2014:

- Decreases the penalty for bullying from a first degree misdemeanor to a second degree misdemeanor.
- Decreases the penalty for aggravated bullying from a third degree felony to a first degree misdemeanor.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

Appropriations Subcommittee on Criminal and Civil Justice (Dean)
recommended the following:

Senate Amendment

Delete line 36
and insert:
is directed at a specific person, causes substantial emotional

By the Committee on Criminal Justice; and Senator Simmons

591-01738-14

2014548c1

1 A bill to be entitled
 2 An act relating to bullying; creating s. 784.049,
 3 F.S.; defining terms; providing that a person who
 4 willfully, maliciously, and repeatedly harasses or
 5 cyberbullies another person commits the offense of
 6 bullying; providing that a person who willfully,
 7 maliciously, and repeatedly harasses or cyberbullies
 8 another person and makes a credible threat to that
 9 person commits the offense of aggravated bullying;
 10 providing criminal penalties; providing an effective
 11 date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Section 784.049, Florida Statutes, is created to
 16 read:
 17 784.049 Bullying; aggravated bullying.—
 18 (1) As used in this section, the term:
 19 (a) "Course of conduct" means a pattern of conduct
 20 involving a series of acts over any period of time which
 21 evidences a continuity of purpose. The term does not include
 22 constitutionally protected activity such as picketing or other
 23 organized protests.
 24 (b) "Credible threat" means a verbal or nonverbal threat,
 25 or both, including a threat delivered electronically or implied
 26 by a pattern of conduct, which places the target of the threat
 27 in reasonable fear for his or her safety, the safety of his or
 28 her family, or the safety of a closely associated individual and
 29 which is made with the apparent ability to carry out the threat.

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30 For purposes of prosecution under this section, it is not
 31 necessary to prove that the person making the threat had the
 32 intent to actually carry out the threat.
 33 (c) "Cyberbullying" means the communication of, or the
 34 attempt to communicate, words, images, symbols, or spoken
 35 language by or through the use of electronic communication which
 36 is directed to a specific person, causes substantial emotional
 37 distress to that person, and does not serve a legitimate
 38 purpose.
 39 (d) "Harass" means to engage in a course of conduct
 40 directed at a specific person which causes substantial emotional
 41 distress to that person and which does not serve a legitimate
 42 purpose.
 43 (2) A person who willfully, maliciously, and repeatedly
 44 harasses or cyberbullies another person commits the offense of
 45 bullying, a misdemeanor of the second degree, punishable as
 46 provided in s. 775.082 or s. 775.083.
 47 (3) A person who willfully, maliciously, and repeatedly
 48 harasses or cyberbullies another person and makes a credible
 49 threat to that person commits the offense of aggravated
 50 bullying, a misdemeanor of the first degree, punishable as
 51 provided in s. 775.082 or s. 775.083.
 52 Section 2. This act shall take effect October 1, 2014.

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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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 384

INTRODUCER: Senator Bradley

SUBJECT: Juvenile Sentencing

DATE: March 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Pre-meeting
4.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 384 conforms Florida law to recent United States 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 parole³ 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:

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.

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).

VIII. Statutes Affected:

This bill substantially amends section 775.082 of the Florida Statutes. 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Bradley

7-00151B-14

2014384__

A bill to be entitled

An act relating to juvenile sentencing; amending s. 775.082, F.S.; providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring a judge to consider certain factors before determining if life imprisonment is an appropriate sentence for a homicide defendant; providing for review of sentences of certain offenders who were under the age of 18 at the time of the offense; providing requirements and procedures for such reviews; amending ss. 316.3026, 373.430, 403.161, and 648.571, F.S.; conforming cross-references; providing an effective date.

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

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

(b) For offenses committed before the offender attained 18

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years of age, a person who is convicted of a capital felony or an offense that was reclassified as a capital felony shall be punished by life imprisonment and is ineligible for parole if the judge at a mandatory sentencing hearing concludes that life imprisonment is an appropriate sentence. In determining whether life imprisonment is an appropriate sentence, the judge shall consider factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to:

1. The nature and circumstances of the offense committed by the defendant.

2. The effect of the crime on the victim's family and on the community.

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

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

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

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

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

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

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

10. The possibility of rehabilitating the defendant.

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59
60 If the judge concludes that life imprisonment is not an
61 appropriate sentence, the defendant shall be punished by
62 imprisonment for a term of not less than 35 years.

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

65 (a)1. For a life felony committed ~~before~~ ~~prior to~~ October
66 1, 1983, by a term of imprisonment for life or for a term of
67 years not less than 30.

68 2. For a life felony committed on or after October 1, 1983,
69 by a term of imprisonment for life or by a term of imprisonment
70 not exceeding 40 years.

71 3. Except as provided in subparagraph 4., for a life felony
72 committed on or after July 1, 1995, by a term of imprisonment
73 for life or by imprisonment for a term of years not exceeding
74 life imprisonment.

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

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

79 (II) A split sentence that is a term of not less than 25
80 years' imprisonment and not exceeding life imprisonment,
81 followed by probation or community control for the remainder of
82 the person's natural life, as provided in s. 948.012(4).

83 b. For a life felony committed on or after July 1, 2008,
84 which is a person's second or subsequent violation of s.
85 800.04(5)(b), by a term of imprisonment for life.

86 (b) Notwithstanding paragraph (a), for offenses committed
87 before the offender attained 18 years of age, a person convicted

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88 under s. 782.04 of an offense that was reclassified as a life
89 felony is eligible to be punished by life imprisonment or by
90 imprisonment for a term of years equal to life imprisonment if
91 the judge at a mandatory sentencing hearing considers factors
92 relevant to the offense and to the defendant's youth and
93 attendant circumstances, including, but not limited to, the
94 factors listed in paragraph (1)(b), and concludes that
95 imprisonment for life or a term of years equal to life
96 imprisonment is an appropriate sentence.

97 ~~(c)(b)~~ For a felony of the first degree, by a term of
98 imprisonment not exceeding 30 years or, when specifically
99 provided by statute, by imprisonment for a term of years not
100 exceeding life imprisonment. However, for offenses committed
101 before the offender attained 18 years of age, a person convicted
102 under s. 782.04 of a first-degree felony punishable by a term of
103 years not exceeding life imprisonment or an offense that was
104 reclassified as a first-degree felony punishable by a term of
105 years not exceeding life imprisonment is eligible for a term of
106 years equal to life imprisonment only if the judge at a
107 mandatory sentencing hearing considers factors relevant to the
108 offense and to the defendant's youth and attendant
109 circumstances, including, but not limited to, the factors
110 specified in paragraph (1)(b), and concludes that a term of
111 years equal to life imprisonment is an appropriate sentence.

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

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

116 Section 2. (1) For offenses committed before the offender

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117 attained 18 years of age, a person who is sentenced to life
 118 imprisonment, imprisonment for life, or imprisonment for a term
 119 of more than 25 years for any offense that is not included in s.
 120 782.04, Florida Statutes, is entitled to a review of his or her
 121 sentence after 25 years. The sentencing court shall retain
 122 original jurisdiction for the duration of the sentence for this
 123 purpose.

124 (2) The Department of Corrections shall notify a juvenile
 125 offender who is committed to the department of his or her
 126 eligibility to participate in a resentencing hearing 18 months
 127 before the beginning of his or her 25th year of incarceration.
 128 The juvenile offender may apply to the court of original
 129 jurisdiction requesting that a resentencing hearing be held.

130 (3) An offender is entitled to be represented by counsel,
 131 and the court shall appoint a public defender to represent the
 132 offender if the offender cannot afford an attorney.

133 (4) The court shall hold a resentencing hearing to
 134 determine whether the offender's sentence should be modified.
 135 The resentencing court shall consider all of the following:

136 (a) Whether the offender demonstrates maturity and
 137 rehabilitation.

138 (b) Whether the offender remains at the same level of risk
 139 to society as he or she did at the time of the initial
 140 sentencing.

141 (c) The opinion of the victim or the victim's next of kin.
 142 The absence of the victim or the victim's next of kin from the
 143 resentencing hearing may not be a factor in the court's
 144 determination under this section. If the victim or the victim's
 145 next of kin chooses not to participate in the hearing, the court

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146 may consider previous statements made by the victim or the
 147 victim's next of kin during the trial or initial sentencing
 148 phase.

149 (d) Whether the offender was a relatively minor participant
 150 in the criminal offense or acted under extreme duress or the
 151 domination of another person.

152 (e) Whether the offender has shown sincere and sustained
 153 remorse for the criminal offense.

154 (f) Whether the offender's age, maturity, and psychological
 155 development at the time of the offense affected his or her
 156 behavior.

157 (g) Whether the offender has successfully obtained a
 158 general educational development certificate or completed another
 159 educational, technical, work, vocational, or self-rehabilitation
 160 program, if such a program is available.

161 (h) Whether the offender was a victim of sexual, physical,
 162 or emotional abuse before he or she committed the offense.

163 (i) The results of any mental health assessment, risk
 164 assessment, or evaluation of the offender as to rehabilitation.

165 (5) If the court determines at the resentencing hearing
 166 that the offender has been rehabilitated and is reasonably
 167 believed to be fit to reenter society based on these factors, a
 168 term of probation of at least 5 years shall be imposed. If the
 169 court determines that the offender has not demonstrated
 170 rehabilitation and is not fit to reenter society based on these
 171 factors, the court shall issue an order in writing stating the
 172 reasons why the sentence is not being modified.

173 Section 3. Subsection (2) of section 316.3026, Florida
 174 Statutes, is amended to read:

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175 316.3026 Unlawful operation of motor carriers.-
 176 (2) Any motor carrier enjoined or prohibited from operating
 177 by an out-of-service order by this state, any other state, or
 178 the Federal Motor Carrier Safety Administration may not operate
 179 on the roadways of this state until the motor carrier has been
 180 authorized to resume operations by the originating enforcement
 181 jurisdiction. Commercial motor vehicles owned or operated by any
 182 motor carrier prohibited from operation found on the roadways of
 183 this state shall be placed out of service by law enforcement
 184 officers of the Department of Highway Safety and Motor Vehicles,
 185 and the motor carrier assessed a \$10,000 civil penalty pursuant
 186 to 49 C.F.R. s. 383.53, in addition to any other penalties
 187 imposed on the driver or other responsible person. Any person
 188 who knowingly drives, operates, or causes to be operated any
 189 commercial motor vehicle in violation of an out-of-service order
 190 issued by the department in accordance with this section commits
 191 a felony of the third degree, punishable as provided in s.
 192 775.082(3)(e) ~~775.082(3)(d)~~. Any costs associated with the
 193 impoundment or storage of such vehicles are the responsibility
 194 of the motor carrier. Vehicle out-of-service orders may be
 195 rescinded when the department receives proof of authorization
 196 for the motor carrier to resume operation.
 197 Section 4. Subsection (3) of section 373.430, Florida
 198 Statutes, is amended to read:
 199 373.430 Prohibitions, violation, penalty, intent.-
 200 (3) Any person who willfully commits a violation specified
 201 in paragraph (1)(a) is guilty of a felony of the third degree,
 202 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and
 203 775.083(1)(g), by a fine of not more than \$50,000 or by

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204 imprisonment for 5 years, or by both, for each offense. Each day
 205 during any portion of which such violation occurs constitutes a
 206 separate offense.
 207 Section 5. Subsection (3) of section 403.161, Florida
 208 Statutes, is amended to read:
 209 403.161 Prohibitions, violation, penalty, intent.-
 210 (3) Any person who willfully commits a violation specified
 211 in paragraph (1)(a) is guilty of a felony of the third degree
 212 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and
 213 775.083(1)(g) by a fine of not more than \$50,000 or by
 214 imprisonment for 5 years, or by both, for each offense. Each day
 215 during any portion of which such violation occurs constitutes a
 216 separate offense.
 217 Section 6. Paragraph (c) of subsection (3) of section
 218 648.571, Florida Statutes, is amended to read:
 219 648.571 Failure to return collateral; penalty.-
 220 (3)
 221 (c) Allowable expenses incurred in apprehending a defendant
 222 because of a bond forfeiture or judgment under s. 903.29 may be
 223 deducted if such expenses are accounted for. The failure to
 224 return collateral under these terms is punishable as follows:
 225 1. If the collateral is of a value less than \$100, as
 226 provided in s. 775.082(4)(a).
 227 2. If the collateral is of a value of \$100 or more, as
 228 provided in s. 775.082(3)(e) ~~775.082(3)(d)~~.
 229 3. If the collateral is of a value of \$1,500 or more, as
 230 provided in s. 775.082(3)(d) ~~775.082(3)(e)~~.
 231 4. If the collateral is of a value of \$10,000 or more, as
 232 provided in s. 775.082(3)(c) ~~775.082(3)(b)~~.

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233

Section 7. This act shall take effect July 1, 2014.

**THE GUARDIAN AD
LITEM PROGRAM
(A PUBLIC – PRIVATE
PARTNERSHIP)**

**PRESENTATION TO THE SENATE
APPROPRIATIONS SUBCOMMITTEE ON
CRIMINAL AND CIVIL JUSTICE
ON
THE FY 14-15 LEGISLATIVE BUDGET
REQUEST**

March 5, 2014

www.GuardianadLitem.org

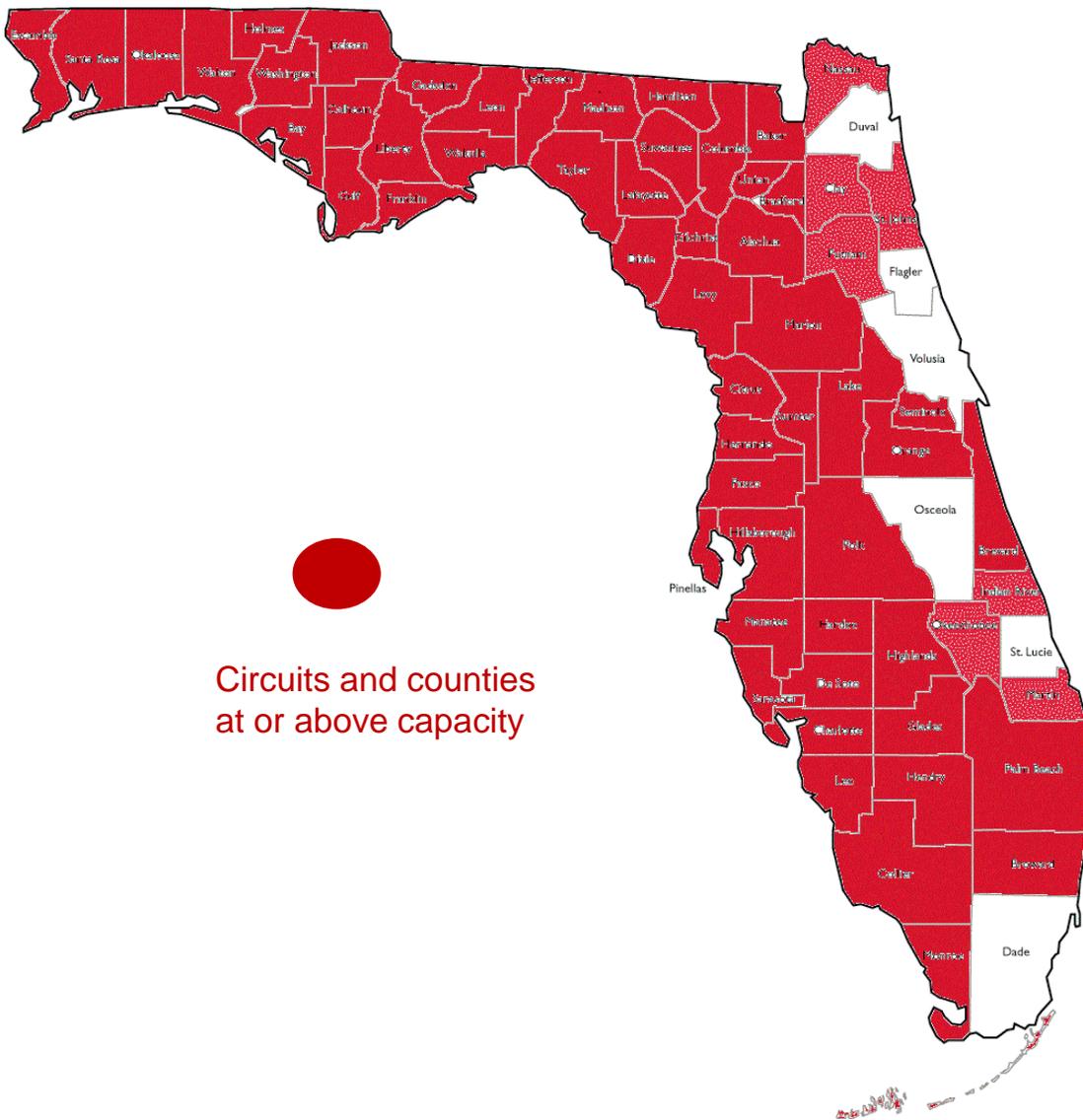


by
Alan F. Abramowitz
Executive Director

GAL Funding and Growth

YEAR	FUNDING	FTEs	VOLUNTEERS
2007	\$35.1 million	610	4,772
2014	\$34.1 million	590	8,838

We Are Almost at Capacity

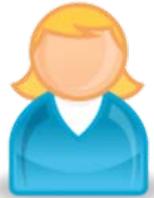


- 15 of 20 judicial circuits are at or above full capacity
- In the remaining circuits, most counties are at capacity.
- Our ability to support new volunteers in those areas is severely strained

GAL Team Workload



Volunteer



GAL
Volunteer
Coordinator



GAL Best Interest
Attorney



Each volunteer supports 2 or more children



Each
Coordinator
supports 38
volunteers



Each Best Interest Attorney
supports 150 children

1. \$6.1 Million Recurring Funding

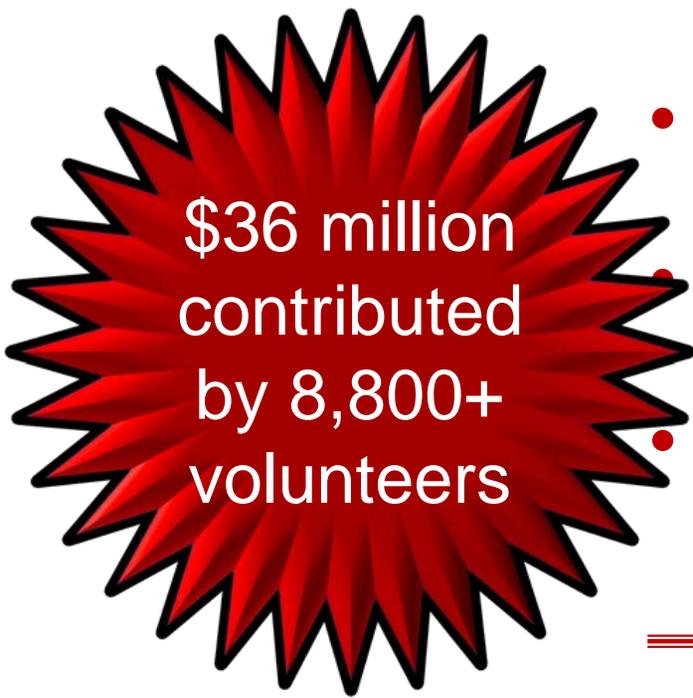
- Reach more than 80% of dependent children
- Represent all children in out of home care
- Reach 10,000 volunteers by the end of 2015, our 35th anniversary.



2. Transfer Data Processing Services to Northwest Regional Data Center

- Savings and efficiency measure

Return on Investment



\$36 million
contributed
by 8,800+
volunteers

- The average GAL volunteer stays 32 months.
- It costs the State \$3,397 to recruit, train and supervise the volunteer over that period.
- The volunteer donates \$7,474 in time and gas over that period.
- **The State accrues an average of \$4,076 in benefits for each volunteer!**

CHILDREN WHO HAVE A GAL VOLUNTEER:

- ★ Do better in school
- ★ Receive more services
- ★ Spend less time in foster care
- ★ Have fewer placement changes
- ★ Are 50% less likely to return to foster care
- ★ Are more likely to be adopted, if appropriate



- ***Eagle Award*** Winner 2012, Award Winner 2013, Prudential - Davis Productivity Awards
- ***Angels in Adoption Award*** Winner 2012
Congressional Coalition on Adoption Institute
- Miami Dade Minority Chamber 2013
Public-Private Partnership Organization of the Year



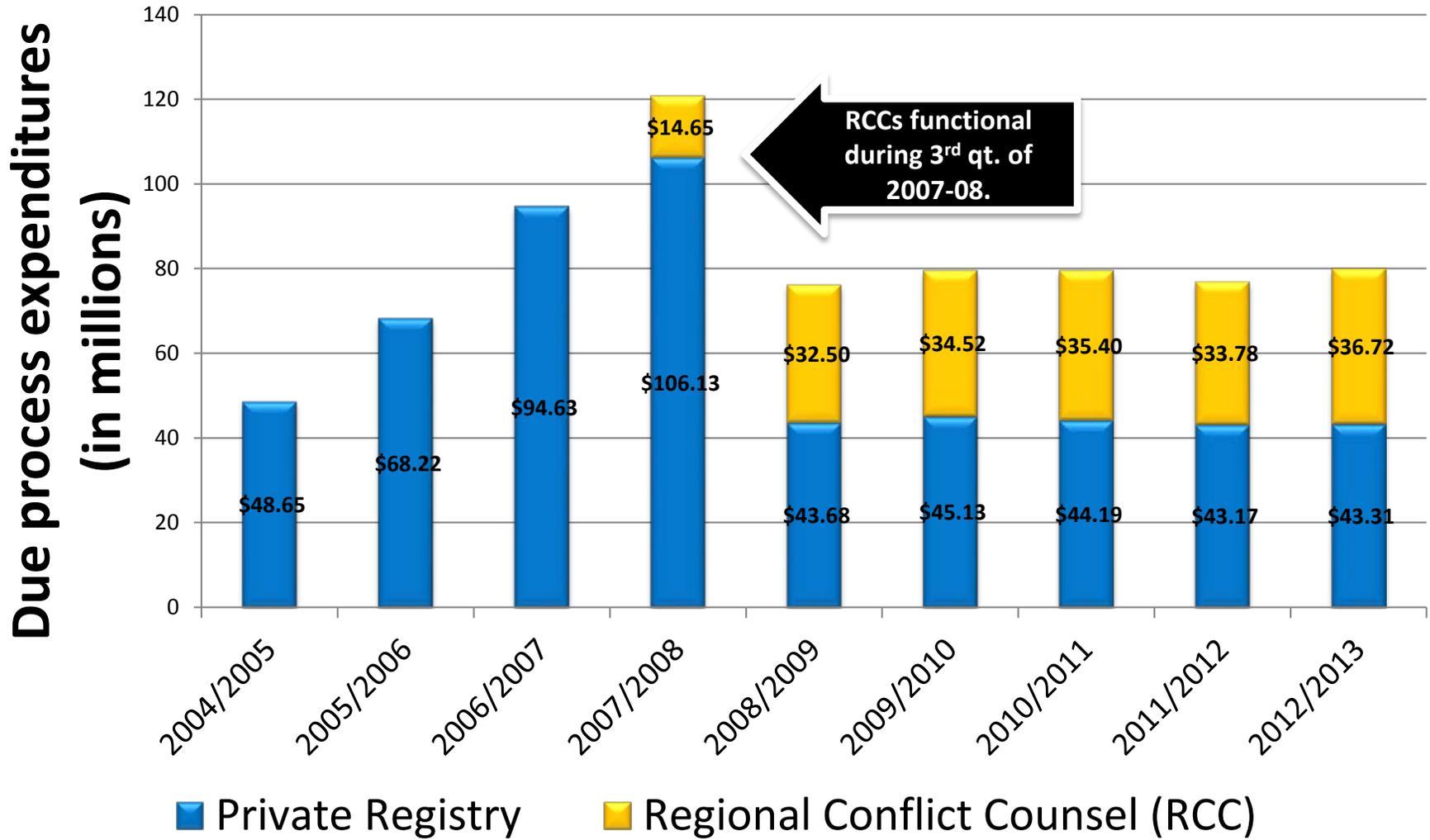
Overview of Legislative Priorities

Senate Appropriations Subcommittee on Criminal and Civil Justice

**Regional Counsel Ita Neymotin, 2nd District
March 5, 2014**

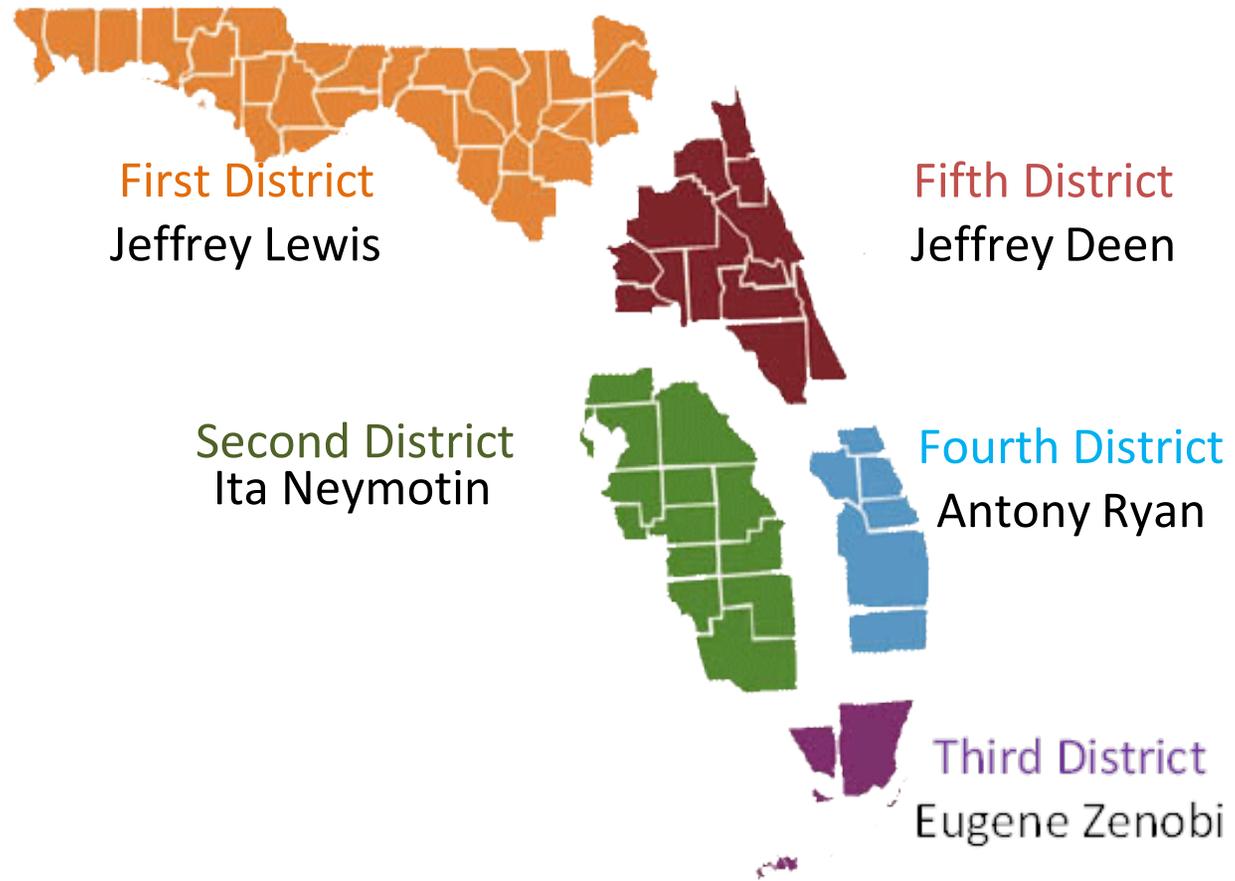


Regional Conflict Counsels vs. Court Appointed Registry





Offices of Criminal Conflict and Civil Regional Counsel





2014-2015 Legislative Priorities

- **Workload Issues:** (FTEs: 35
Total issue for all RCCs: \$3,088,481)
- **Due Process Funding:** (Total issue
\$1,295,000)
- **Technology and E-filing Funding:** (Total
issue: \$ 493,385)
- **Regional Counsel Salary:** (Total issue:
\$177,635)
- **Individual Priorities**

CAPITAL COLLATERAL REGIONAL COUNSEL **2014-2015 LEGISLATIVE BUDGET REQUEST**

- Capital Collateral Regional Counsel (CCRC) represents death sentenced inmates in proceedings in state and federal courts until relief is granted or the sentence of execution is carried out.
- CCRC is divided into three regions: North, Middle and South.
- The North region was reopened in 2013-2014 by the Timely Justice Act.

FY 2014-2015 Budget Request for CCRC-Middle and CCRC-South

- \$245,000: one additional team consisting of one lead attorney, one second chair attorney, and one investigator
- \$ 81,000: IT equipment replacement

FY 2014-2015 Budget Request for CCRC-North

- \$334,686: for three attorneys, one investigator, one staff assistant
 - For FY 2013-2014, CCRC-North was given four positions, which included the appointed CCRC. There are currently ten cases in the Florida Supreme Court which CCRC-North anticipates will be assigned to the office in FY 2014-2015 (double the number predicted by the Legislature in FY 2013-2014). Based upon current year funding, CCRC-North is requesting the additional staff delineated above due to increased workload.
- \$250,000: additional case related costs
- \$ 52,270: operating expenditures



**JUSTICE ADMINISTRATIVE
COMMISSION**



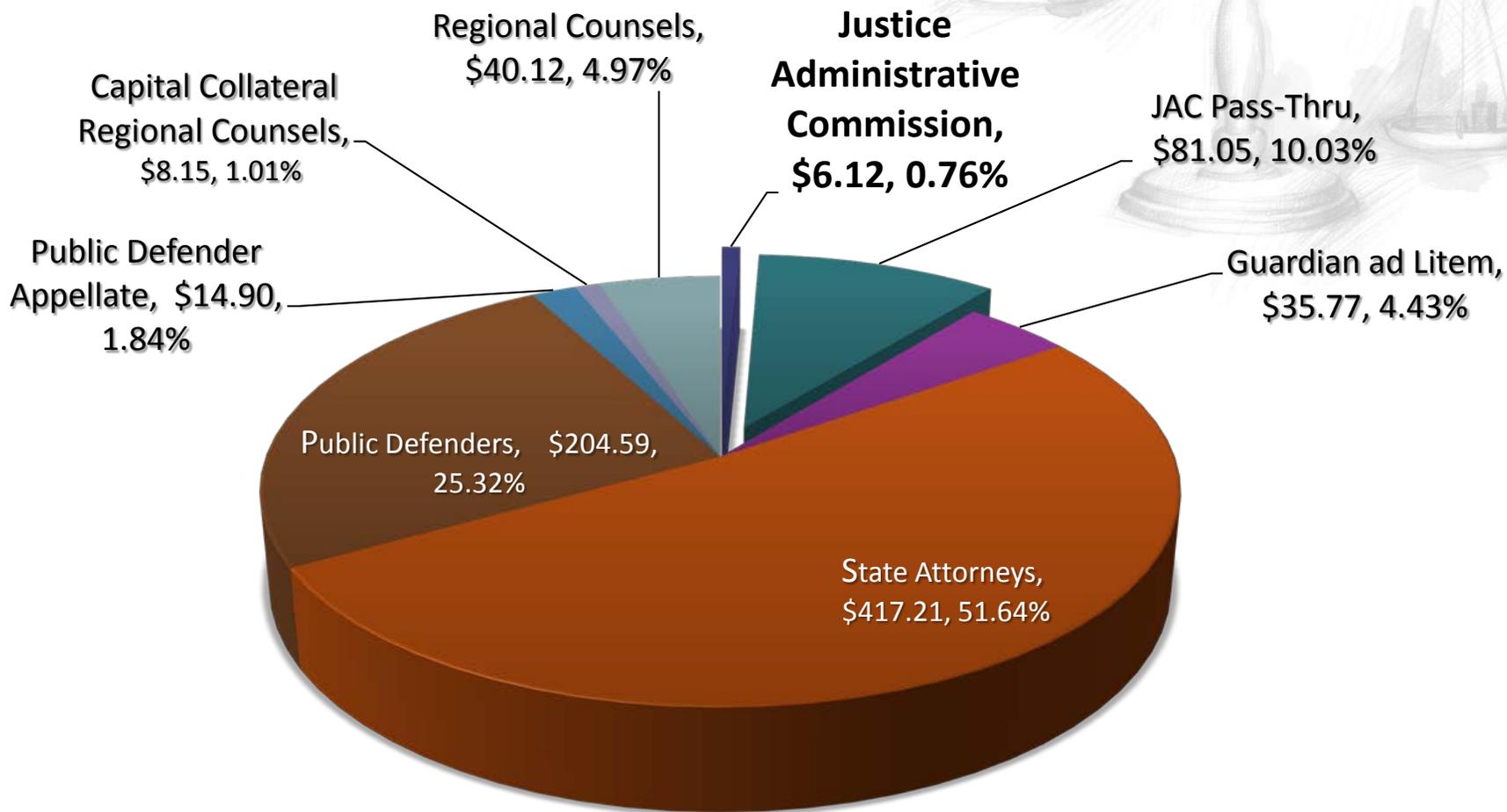
Justice Administrative Commission Legislative Budget Request Fiscal Year 2014-15

Appropriations Subcommittee on Criminal and Civil Justice

March 5, 2014

Alton L. “Rip” Colvin, Jr.
Executive Director

Base Budget 2013-14, \$807.91 Million



Amounts above are reflected in millions.



Agencies Administratively Served by the Justice Administrative Commission

- 20 Offices of State Attorney
- 20 Offices of Public Defender
- 5 Offices of Criminal Conflict & Civil Regional Counsel
- 3 Offices of Capital Collateral Regional Counsel
- Statewide Guardian ad Litem Program

Accounting

Budget

Financial
Services

Human
Resources

JAC Responsibilities for Court Appointed Counsel

Contract with Attorneys and Vendors

Audit Billings for Attorney Fees and Other Costs

Participate in Hearings when Objecting to Fees and/or Costs

Monitor Budgetary Needs for Court Appointed Counsel Appropriations

Report on Various Aspects of this Program



***Justice Administrative Commission
Legislative Budget Request
Fiscal Year 2014-15***



Information Technology Equipment

- Update Citrix hardware and software (network servers and licenses)
- *Replace Storage Area Network (SAN)*
- *Replacement of Miscellaneous IT equipment.*

Total Nonrecurring Budget - \$205,120

Expenses - \$66,461

Other Capital Outlay - \$101,494

Contracted Services - \$37,165

Issue Code 24010C0

Help Desk Staffing

- JAC serves as the single contracting and paying agent for private court appointed counsel representing indigent clients and related vendors.
- JAC's Help Desk fields 800-1,000 questions per month from attorneys, vendors, and agencies served by the JAC.
- Requires research, communication, and coordination with JAC Court Appointed audit and legal staff.
- The high volume can often result in a delayed response time.

Request – Senior Management Consultant – FTE - 1.0

Salary Rate Needed – \$46,382

Salaries and Benefits Needed – \$64,342

Expenses Needed – \$3,074 (\$1,205 is nonrecurring)

HR Outsourcing Needed – \$344

Issue Code 3002110



Public Records Coordinator

- JAC serves as a single administrative conduit for 49 agencies (budget, accounting, human resources, and financial services); as well as contracting and paying private court appointed counsel and related vendors
- Hundreds of thousands of records are housed within the JAC
- Many of the public records requests received by JAC are extensive and complex
- Because the JAC possesses payment information relative to ongoing Civil and Criminal cases, we must coordinate with the agencies we serve in order to ensure that confidential or exempt information is identified and either redacted or withheld as not to hinder or compromise an ongoing case.

Request – Public Records Coordinator - FTE – 1.0

Salary Rate – \$46,382

Salaries and Benefits – \$64,342

Expenses Needed – \$3,074 (\$1,205 is nonrecurring)

HR Outsourcing - \$344

Issue Code 3002190



Financial Services Staffing

- JAC's Financial Services Section provides FLAIR management to 150 users
- Due to recent legislation, training and guidance for contracts, grants, and purchase orders entered into FACTS continues to impact daily workload

Request – Senior Management Analyst - FTE – 1.0

Salary Rate - \$46,382

Salaries and Benefits – \$64,342

Expenses – \$3,074 (\$1,205 is nonrecurring)

HR Outsourcing – \$344

Issue Code 3002160



Financial Services Staffing

- JAC's Financial Services Section reconciles departmental FLAIR records and assists with the completion of the Comprehensive Annual Financial Report (CAFR)
- Assistance is needed to analyze financial data and key financial entries into FLAIR
- In prior years, due to budget reduction two positions were consolidated into one FTE responsible for completing these tasks
- To address these issues would require extensive overtime hours being worked

Request – Professional Accountant II – FTE – 1.0

Salary Rate – \$46,382

Salaries and Benefits – \$64,342

Expenses - \$3,074 (\$1,205 is nonrecurring)

HR Outsourcing – \$344

Issue Code 3002160



Human Resources Staffing

- JAC HR Section is tasked with ensuring that all agencies served comply with increasingly demanding statutory and regulatory requirements under state and federal law
- Compliance often comes in the form of submitting reports, usually with specific deadlines
- HR also is responsible for monitoring and paying invoices from Risk Management and pre- and post- tax parking benefits
- Assistance is also needed in payroll for vouchering overpayments, as well as researching invoices related to retirement matters

Request – Senior Human Resources Coordinator – FTE – 1.0

Salary Rate – \$43,508

Salaries and Benefits – \$61,048

Expenses – \$3,074 (\$1,205 is nonrecurring)

HR Outsourcing – \$344

Issue Code 3002180



Senior Management Designees and Benefits for JAC Staff

- Section 121.055(1)(h), F.S., provides Senior Management Service Class retirement for select managerial staff and attorneys within the Justice Administration, including the Executive Director of JAC
- Participation in this retirement class is compulsory for Assistant State Attorneys, Assistant Statewide Prosecutors, Assistant Public Defenders, and Assistant Capital Collateral Regional Counsels
- Managerial employees designated by the State Attorney or Public Defender receive this benefit
- Neither JAC's General Counsel, Assistant General Counsels, nor senior managerial staff receive Senior Management Service Class retirement

Request Senior Management Service Class retirement for JAC's Attorneys and One Managerial Staff - Salaries and Benefits - \$43,000

Issue Code 4202A20



JAC Legislative Budget Request Fiscal Year 2014-15

- Information Technology Infrastructure Replacement – \$205,120
- Help Desk Staffing – 1 FTE – \$67,760
- Public Records Coordinator – 1 FTE – \$67,760
- Financial Services Staffing – 2 FTE – \$135,520
- Human Resources Staffing – 1 FTE – \$64,466
- Senior Management Designees – \$43,000

Gov. Budget Rec. \$205,120

Other Issues 378,506

JAC LBR Total \$583,626



Questions?

Contact Info:

Alton L. "Rip" Colvin, Jr.

Executive Director

rip.colvin@justiceadmin.org

850-488-2415

JAC Website: www.justiceadmin.org

