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LEGISLATIVE ACTION

Senate

House

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04/29/2013 01:52 PM

Senator Garcia moved the following:

Senate Amendment (with title amendment)

Between lines 126 and 127

insert:

Section 2. A person who is sentenced under this section for a crime he or she committed when he or she was under the age of 18 is entitled to a review of his or her sentence as follows:

(1) A person sentenced to life in prison without parole, life in prison, or a term of years 50 years or greater shall have his or her sentence reviewed after 25 years. The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose. The Department of Corrections shall notify juvenile offenders who are committed to the department of



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14 their eligibility to participate in a resentencing hearing 18
15 months prior to the beginning of their 25th year of
16 incarceration. The juvenile offender may apply to the court of
17 original jurisdiction requesting that a resentencing hearing be
18 held.

19 (a) An offender is entitled to be represented by counsel,
20 and the court shall appoint a public defender to represent the
21 offender if the offender cannot afford an attorney.

22 (b) The court shall hold a resentencing hearing to
23 determine whether the offender's sentence should be modified.
24 The resentencing court shall consider all of the following:

25 1. Whether the offender demonstrates maturity and
26 rehabilitation.

27 2. Whether the offender remains at the same level of risk
28 to society as he or she did at the time of the initial
29 sentencing.

30 3. The opinion of the victim or the victim's next of kin.
31 The absence of the victim or the victim's next of kin from the
32 resentencing hearing may not be a factor in the court's
33 determination under this section. If the victim or the victim's
34 next of kin chooses not to participate in the hearing, the court
35 may consider previous statements made by the victim or the
36 victim's next of kin during the trial or initial sentencing
37 phase.

38 4. Whether the offender was a relatively minor participant
39 in the criminal offense or acted under extreme duress or the
40 domination of another person.

41 5. Whether the offender has shown sincere and sustained
42 remorse for the criminal offense.



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43 6. Whether the offender's age, maturity, and psychological
44 development at the time of the offense affected his or her
45 behavior.

46 7. Whether the offender has successfully obtained a general
47 educational development certificate or completed another
48 educational, technical, work, vocational, or self-rehabilitation
49 program, if such a program is available.

50 8. Whether the offender was a victim of sexual, physical,
51 or emotional abuse before he or she committed the offense.

52 9. The results of any mental health assessment, risk
53 assessment, or evaluation of the offender as to rehabilitation.

54 (c) If the court determines at the resentencing hearing
55 that the offender has been rehabilitated and is reasonably
56 believed to be fit to reenter society based on these factors, a
57 term of probation of at least 5 years shall be imposed. If the
58 court determines that the offender has not demonstrated
59 rehabilitation and is not fit to reenter society based on these
60 factors, the court shall issue an order in writing stating the
61 reasons the sentence is not being modified.

62 (d) An offender who is not resentenced under this
63 subsection at the initial resentencing is eligible for up to
64 three additional sentencing reviews. A minimum of 5 years must
65 pass before the individual is eligible for the sentencing
66 review. An offender sentenced to a term of years less than life
67 may not petition the court for a review of his or her sentence
68 if he or she is in the last 5 years of his or her sentence.

69 (2) If the person convicted is sentenced to a term of years
70 greater than 25 years but less than 50 years, the person shall
71 be entitled to a single review hearing at the midpoint of his or



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72 her sentence. The person shall be subject to the resentencing
73 guidelines set forth in paragraph (b). If the judge at the
74 resentencing hearing determines that the original sentence is
75 appropriate, no other reviews shall be granted.

76 (3) This section is retroactive to the extent necessary to
77 comply with the ruling of the United State Supreme Court in
78 Miller v. Alabama, 567 U.S. , No. 10-9646 (2012) and
79 Graham v. Florida, 560 U.S. , No. 08-7412 (2010).

80
81 ===== T I T L E A M E N D M E N T =====

82 And the title is amended as follows:

83 Delete line 7

84 and insert:

85 imprisonment is an appropriate sentence; providing for
86 review of certain sentences of offenders who were
87 under the age of 18 at the time of the offense;
88 providing requirements and procedures for such
89 reviews; providing an