IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC13-865

REBECCA LEE FALCON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

SUPPLEMENTAL REPLY BRIEF OF PETITIONER REBECCA LEE FALCON

ON DISCRETIONARY REVIEW OF A DECISION OF THE
FIRST DISTRICT COURT OF APPEAL

Elliot H. Scherker
Florida Bar No. 202304
Greenberg Traurig, P.A.
Wells Fargo Center
333 S.E. Second Avenue
Suite 4400
Miami, FL 33131
Telephone: 305.579.0500
Facsimile: 305.579.0717

Paolo G. Annino
Florida Bar No. 379166
Co-Director, Public
Interest Law Center
Florida State College of
Law
425 West Jefferson Street
Tallahassee, FL 32306
Telephone: 850.644.9930
Facsimile: 850.644.0879

Karen M. Gottlieb
Florida Bar No. 199303
Post Office Box 1388
Coconut Grove, FL 33233
Telephone: 305.648.3172
Facsimile: 305.648.0465

TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS
(Continued)

Page

Constitutional Provisions

ARGUMENT

I. BECAUSE SECTION 775.082(1), FLORIDA STATUTES (2013), IS UNCONSTITUTIONAL AS APPLIED TO JUVENILE DEFENDANTS, THE COURT, TO CONFORM TO BOTH *MILLER V. ALABAMA*'S EIGHTH AMENDMENT ANALYSIS AND THE FLORIDA LEGISLATURE'S INTENT, SHOULD ORDER THAT TRIAL COURTS MAY IMPOSE A TERM OF YEARS, UP TO AND INCLUDING LIFE IMPRISONMENT, ON JUVENILE DEFENDANTS CONVICTED OF FIRST-DEGREE MURDER.

A. The Florida Legislature's New Remedy Statute is Consistent with the Remedy Suggested by Petitioner and Inconsistent with the Remedy Suggested by the State.

The state fails to acknowledge that the landscape for remedy analysis has changed. Buried in a footnote at the conclusion of its argument is a brief reference to the newly engrossed bill for *Graham/Miller* sentencing, Fla. Legisl., An Act Relating to Juvenile Sentencing, 2014 Reg. Sess., CS for HB 7035 [hereinafter Appendix ("A")], that has now been unanimously passed by the Florida Legislature (amending section 775.082, Florida Statutes (2013), and creating sections 921.1401 and 921.1402, Florida Statutes) and awaits the Governor's signature. (Supplemental Answer Brief ("SAB") at 23, n.4). The significance of the act is patent, for if statutory revival is, as the state asserts, a vehicle to enforce legislative intent, we now have "the best evidence of that intention." (See SAB at 13). And that intention is in no way tethered to the 21-year-old 1993 statute that the state would have this Court "revive."

In keeping with the sentencing parameters of *Miller v. Alabama*, 132 S. Ct. 2455 (2012), as discussed in Ms. Falcon's Supplemental Brief ("SB") at 8-11, the Legislature has rejected the one-size-fits-all approach when considering the

sentencing of juveniles. Accordingly, the state's argument that legislative intent supports mandatory lifetime sentences, either with or without parole consideration (SAB at 8-19), is directly refuted by the individualized sentencing that the Legislature has prescribed as the best method for complying with *Miller*.

Indeed, there are three key aspects of the act that conflict with the state's suggested remedy, but align with the remedy proposed by Ms. Falcon: 1) the Legislature's authorization of term-of-years sentences up to, and including, life imprisonment; 2) the grant of judicial discretion in choosing the term of years; and 3) the provision for judicial modification of the sentence to probation after a significant period of time.

Turning to the specifics of CS/HB 7035, section one provides for a term-of-years sentence, up to and including life imprisonment, with the precise contours of the sentencing options dependent on the circumstances of the homicide. (A:2-3). While a sentence of life imprisonment is authorized, it can be imposed only if that sentence is found appropriate after a sentencing hearing in accordance with the provisions in the recently passed section 921.1401, Florida Statutes. (A:8-9). Specific factors to be considered by the court at the hearing are enumerated therein, and focus on the circumstances of the offense, as well as the youth and attendant circumstances of the offender, and the possibility of rehabilitation. *Id.* If the court determines that a life sentence is not appropriate, a range of term-of-years

sentences are available, dependent on the juvenile's participation in the homicide. (A:2-3).[1]

There is no longer any question as to the "policy considerations that properly belong to the Legislature." (SAB at 19). It is manifest that the Legislature does not support the remedy proposed by the state that would mandate a life sentence for all juveniles convicted of capital homicide – either life imprisonment without the possibility of parole, or, by "reviving" the 1993 statute, life imprisonment without the possibility of parole for 25 years. To the contrary, the Legislature has chosen to comply with *Miller*'s teachings by providing for judicial discretion and term-of-years sentences as suggested by Ms. Falcon in her Supplemental Brief. (SB at 18-20).

The new legislative scheme similarly defeats the state's assertion that the Legislature would prefer to expand parole rather than to permit judicial discretion in sentencing. (See SAB at 19-20). The Legislature has made clear that it has no interest in rebuilding the commission that it has been increasingly diminishing in both size and caseload since 1983. (See SB at 11-12). No doubt in response to *Miller*'s recognition of the "great difficulty" in distinguishing at an early age

[1] Specifically, the Legislature has divided juvenile capital-homicide offenders into those who killed, or intended or attempted to kill, and those who did not. For the former, the sentencing range is 40 years to life, while for the latter, there remains the possibility of a life sentence but there is no minimum sentence. (A:2-3). Regardless of the apposite category, no juvenile can be sentenced to life imprisonment without a sentencing hearing at which his or her youth and factors attendant to the offense and the offender may be considered, and the determination made that a life sentence is appropriate. (A:7-9).

between the rare irredeemable juvenile and those amenable to rehabilitation whose crimes reflect transient immaturity, 132 S. Ct. at 2469, the Legislature has provided an avenue for subsequent modification of the juvenile's sentence, but not through the parole system.

Instead, section three of CS/HB 7035 establishes section 921.1402, Florida Statutes, requiring sentencing review by the court of original jurisdiction for virtually all juveniles.[2] (A:9-13). Dependent on the nature of the capital homicide – whether or not the juvenile killed or attempted or intended to kill – this review is afforded after either 15 or 25 years. (A:9-10). And this review before the court differs significantly from that provided by the parole commission. The juvenile must receive notification of his or her eligibility for sentencing modification 18 months before the time for the hearing, and is entitled to representation by private counsel or a public defender if the juvenile cannot afford counsel. (A:11). Additionally, the Legislature has not left it to the trial court to establish the criteria for modification, as it has done for parole by the Parole Commission under section 947.165(1), Florida Statutes (2013). Rather, the Legislature has enumerated a nonexclusive list of nine factors to be considered by the sentence-review court (A:11-13), with an overriding emphasis on whether the juvenile has been

[2] The only juvenile who is not entitled to sentencing review after conviction of a capital homicide is one who has killed or intended or attempted to kill, and who has a prior conviction of one of the serious felony offenses specified in the statute. (A:9-10). Otherwise, even a child convicted of a capital homicide and for whom a life sentence has been deemed appropriate after a sentencing hearing, is eligible for subsequent sentencing review. *Id.*

rehabilitated, in accordance with *Miller*'s acknowledgment of a child's "diminished culpability and heightened capacity for change." *Miller*, 132 S. Ct. at 2469.

At the conclusion of the sentence-review hearing, the court must determine if the juvenile "has been rehabilitated and is reasonably believed to be fit to reenter society." (A:13). If the court so concludes, "the court shall modify the sentence and impose a term of probation of at least 5 years." *Id.* If the court does not so conclude, the court must enter a written order explaining why the sentence is not being modified. *Id.*

The Legislature thus has recognized that sentences for juveniles convicted of capital homicide should be revisited at a later point in time. But the Legislature did not choose to turn back the clock by decades and reinstitute parole as the means for sentence review, as the state now urges this Court to do. Instead, the Legislature has made clear its preference for judicial review, and its continued opposition to extending parole. Because the state is correct that "policy judgments ... are properly relegated to the Legislature" (SAB at 13), the state's revival-of-parole remedy, which contravenes the Legislature's manifest intent, completely misses its mark. The judicial sentence reduction and modification authorized by the new statute is, however, in perfect accord with the remedy of augmenting Rule 3.800(c) of the Florida Rules of Criminal Procedure, as suggested by Ms. Falcon in her Supplemental Brief. (SB at 20-21).

B. Upon Declaring *Miller* Retroactive, This Court Should Order a Remedy Consistent with Legislative Intent.

The Legislature's *Miller* remedy is expressly applicable to offenses committed on or after July 1, 2014. (A:16). It has been suggested that the Legislature would be constrained by the Florida Constitution to provide otherwise. *Partlow v. State*, 134 So. 3d 1027, 1032 n. 7 (Fla. 1st DCA 2013) (Makar, J., concurring in part and dissenting in part) ("To the extent a legislative solution exists, it faces hurdles including the state constitutional constraint that the '[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.' Art. X, § 9, Fla. Const.") (citations omitted); *see also Witt v. State*, 387 So. 2d 922 (Fla. 1980) (providing for the Court to declare that a fundamental constitutional right is retroactive). Irrespective of any legislative limitation, this Court has the responsibility and inherent power to enforce *Miller*'s constitutional jurisprudence (SB at 6-8), and can now do so informed by legislative action.

The state does not and cannot quarrel with Ms. Falcon's argument that this Court must require an individualized sentencing hearing before a juvenile may be sentenced to lifetime incarceration. (SB at 8-10, 18; SAB at 6-8). The state does, however, contest the term-of-years sentences that Ms. Falcon proposes (SB at 18-20; SAB at 20-22) – and that the Legislature has prescribed – where lifetime sentences are deemed inappropriate. As to Ms. Falcon's suggestion for modification of Rule 3.800(c) to permit subsequent judicial modification and reduction of a juvenile's lifetime or term-of-years sentence, the state is notably silent. (SB at 20-21).

Both parties thus concur that this Court should require an individualized sentencing hearing before a juvenile may be resentenced to life imprisonment, which is also in accordance with the hearing mandated by the Legislature in its new legislation. This Court, in reliance on either its inherent power to enforce constitutional guarantees (see SB at 6-8), or the all-writs provision of Article V, Section 3(b)(7) of the Florida Constitution, should implement the hearing prerequisite that all agree is required by *Miller* and the Eighth Amendment.[3]

Regarding Ms. Falcon's suggestion that the Court provide for subsequent judicial reduction and modification of a juvenile's lifetime or term-of-years sentence, as an addition to the current Florida Rule of Criminal Procedure 3.800 that provides a vehicle for reduction and modification (SB at 20-21), the state's silence is loud. This remedy should be adopted because it is consistent both with *Miller*, and the legislative response to *Miller*.

As for the term-of-years sentencing, the state is simply wrong that this remedy would be opposed by the Legislature. (See SAB at 19-22). Indeed, as discussed above, this is precisely the remedy that the Legislature has chosen. The Court could adopt this remedy under one of the two theories that has been advanced by Judges Wolf or Osterhaus, as discussed in Ms. Falcon's Supplemental Brief. (SB at 18-19).

---

[3] This Court has used its all-writs authority to address and remedy the illegality of a criminal sentence where, as here, there is an independent basis of jurisdiction. *Bedford v. State*, 633 So. 2d 13, 14 (Fla. 1994); *see Williams v. State*, 913 So. 2d 541, 543-44 (Fla. 2005).

The state's proportionality concerns (SAB at 21-22) could be addressed by the Court ordering, again through its inherent power or by its all-writs authority, that sentencing courts abide by the legislative sentencing construct in choosing term-of-years sentences. Following the Legislature's lead in this manner would be consistent with the separation-of-powers doctrine that is the centerpiece of the state's revival argument, and certainly, far more consistent than returning to a decades-old statute that the Legislature has no interest in sustaining.

The Court should thus adopt the remedy proposed by Ms. Falcon that implements legislative will. By doing so, the Eighth Amendment proscription as interpreted in *Miller,* as well as the interests of equal justice hailed in *Witt*, 387 So. 2d at 925, will best be served.

II. BECAUSE *MILLER* IS RETROACTIVE UNDER *WITT V. STATE*, THERE CAN BE NO DISTINCTION IN REMEDY.

The state rightly concedes that "there are no principled distinctions between the two" types of cases, those pending on direct appeal and those seeking post-conviction relief, in terms of the proper remedy. (SAB at 24).

Respectfully submitted,

Elliot H. Scherker
Florida Bar No. 202304
Greenberg Traurig, P.A.
Wells Fargo Center
333 Southeast Second Avenue
Suite 4400
Miami, Florida 33131
Telephone: 305.579.0500
Facsimile: 305.579.0717
scherkere@gtlaw.com
miamiappellateservice@gtlaw.com

Karen M. Gottlieb
Florida Bar No. 199303
Post Office Box 1388
Coconut Grove, Florida 33233
Telephone: 305.648.3172
Facsimile: 305.648.0465
Karen.m.gottlieb@gmail.com

By: /s/Elliot H. Scherker
Elliot H. Scherker

Paolo G. Annino
Florida Bar No. 379166
Co-Director,
Public Interest Law Center
Florida State College of Law
425 West Jefferson Street
Tallahassee, Florida 32306
Telephone: 850.644.9930
Facsimile: 850.644.0879
pannino@law.fsu.edu

Counsel for Petitioner Rebecca Lee Falcon

CERTIFICATE OF SERVICE

I certify that a copy of this supplemental reply brief was sent via Registered e-mail on June 19, 2014, to:

The Honorable Pamela Jo Bondi
Attorney General
Trisha Meggs Pate
Assistant Attorney General
Office of the Attorney General
PL-01 The Capitol
Tallahassee, Florida 32399
Trisha.pate@myfloridalegal.com
crimapptlh@myfloridalegal.com

Marsha L. Levick
Juvenile Law Center
1315 Walnut Street, Fourth Floor
Philadelphia, Pennsylvania 19107
mlevick@jlc.org

George E. Schulz, Jr.
Holland & Knight
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
Buddy.schulz@hklaw.com

/s/ Elliot H. Scherker
Elliot H. Scherker

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ Elliot H. Scherker

APPENDIX

An act relating to juvenile sentencing; amending s. 775.082, F.S.; providing criminal penalties applicable to a juvenile offender for certain serious felonies; requiring a judge to consider specified factors before determining if life imprisonment is an appropriate sentence for a juvenile offender convicted of certain offenses; providing review of sentences for specified juvenile offenders; creating s. 921.1401, F.S.; providing sentencing proceedings for determining if life imprisonment is an appropriate sentence for a juvenile offender convicted of certain offenses; providing certain factors a judge shall consider when determining if life imprisonment is appropriate for a juvenile offender; creating s. 921.1402, F.S.; defining the term "juvenile offender"; providing sentence review proceedings to be conducted after a specified period of time by the original sentencing court for juvenile offenders convicted of certain offenses; providing for subsequent reviews; requiring the Department of Corrections to notify a juvenile offender of his or her eligibility to participate in sentence review hearings; entitling a juvenile offender to be represented by counsel; providing factors that must be considered by the court in the

sentence review; requiring the court to modify a juvenile offender's sentence if certain factors are found; requiring the court to impose a term of probation for any sentence modified; requiring the court to make written findings if the court declines to modify a juvenile offender's sentence; 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)1. A person who actually killed, intended to kill, or

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

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

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

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

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

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

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

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

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

(I) A term of imprisonment for life; or

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

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

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

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

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

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

victim.

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

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

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

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

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

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

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

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

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

Section 2. Section 921.1401, Florida Statutes, is created

to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) The possibility of rehabilitating the defendant.

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

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

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

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

offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence under s. 775.082(1)(b)1.:

1. Murder;

2. Manslaughter;

3. Sexual battery;

4. Armed burglary;

5. Armed robbery;

6. Armed carjacking;

7. Home-invasion robbery;

8. Human trafficking for commercial sexual activity with a child under 18 years of age;

9. False imprisonment under s. 787.02(3)(a); or

10. Kidnapping.

(b) A juvenile offender sentenced to a term of more than 25 years under s. 775.082(3)(a)5.a. or s. 775.082(3)(b)2.a. is entitled to a review of his or her sentence after 25 years.

(c) A juvenile offender sentenced to a term of more than 15 years under s. 775.082(1)(b)2., s. 775.082(3)(a)5.b., or s. 775.082(3)(b)2.b. is entitled to a review of his or her sentence after 15 years.

(d) A juvenile offender sentenced to a term of 20 years or more under s. 775.082(3)(c) is entitled to a review of his or her sentence after 20 years. If the juvenile offender is not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

316.3026 Unlawful operation of motor carriers.—

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

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

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

373.430 Prohibitions, violation, penalty, intent.—

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

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

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

403.161 Prohibitions, violation, penalty, intent.—

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

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

648.571 Failure to return collateral; penalty.—

(3)

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

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

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

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

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

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

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