

By Senators Mitchell, Sullivan, Dawson, Forman, Burt, Brown-Waite, Latvala, Kurth, Sebesta, King, Klein, Meek, Horne, Bronson, Clary, Cowin, Campbell and Holzendorf

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A bill to be entitled  
An act relating to the sentencing of capital felons; amending ss. 921.141, 921.142, F.S.; providing for a separate proceeding to determine whether a defendant accused of or convicted of a capital felony is mentally retarded; prescribing the penalty to be imposed if the defendant is determined to be mentally retarded; amending s. 924.07, F.S.; providing that the state may appeal a determination that a defendant is mentally retarded; providing a definition of mental retardation; providing an effective date.

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

Section 1. Subsection (1) of section 921.141, Florida Statutes, is amended to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.--

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--

(a) Upon conviction or adjudication of guilt of a defendant of a capital felony, or upon a pretrial motion by the defendant, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to ~~death or~~ life imprisonment without consideration of a sentence of death due to the defendant's allegation that the defendant suffers from mental retardation. If the court determines, by a preponderance of the evidence, that the defendant suffers from mental retardation, the court shall sentence the defendant to life imprisonment. The determination

1 shall be made by the trial judge without the jury. The court  
2 shall enter a written order that outlines its findings of fact  
3 and conclusions of law to justify the determination of mental  
4 retardation. A determination of mental retardation under this  
5 paragraph is not an adjudication of incompetence or a  
6 dismissal of any criminal charge or conviction.

7 (b) The state may appeal, pursuant to s. 924.07, a  
8 determination of mental retardation made under paragraph (a).

9 (c) If a convicted capital felon waives the right to  
10 proceed under paragraph (a) or if the court determines that a  
11 convicted capital felon does not suffer from mental  
12 retardation as provided in paragraph (a), the court shall  
13 conduct a separate proceeding to determine whether the  
14 convicted capital felon should be sentenced to death or life  
15 imprisonment as authorized by s. 775.082. The proceeding shall  
16 be conducted by the trial judge before the trial jury as soon  
17 as practicable. If, through impossibility or inability, the  
18 trial jury is unable to reconvene for a hearing on the issue  
19 of penalty, having determined the guilt of the accused, the  
20 trial judge may summon a special juror or jurors as provided  
21 in chapter 913 to determine the issue of the imposition of the  
22 penalty. If the trial jury has been waived, or if the  
23 defendant pleaded guilty, the sentencing proceeding shall be  
24 conducted before a jury impaneled for that purpose, unless  
25 waived by the defendant. In the proceeding, evidence may be  
26 presented as to any matter that the court deems relevant to  
27 the nature of the crime and the character of the defendant and  
28 shall include matters relating to any of the aggravating or  
29 mitigating circumstances enumerated in subsections (5) and  
30 (6). Any such evidence that ~~which~~ the court deems to have  
31 probative value may be received, regardless of its

1 admissibility under the exclusionary rules of evidence,  
2 provided the defendant is accorded a fair opportunity to rebut  
3 any hearsay statements. However, this subsection does ~~shall~~  
4 ~~not be construed to~~ authorize the introduction of any evidence  
5 secured in violation of the Constitution of the United States  
6 or the Constitution of the State of Florida. The state and  
7 the defendant or the defendant's counsel shall be permitted to  
8 present argument for or against sentence of death.

9 Section 2. Subsection (2) of section 921.142, Florida  
10 Statutes, is amended to read:

11 921.142 Sentence of death or life imprisonment for  
12 capital drug trafficking felonies; further proceedings to  
13 determine sentence.--

14 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--

15 (a) Upon conviction or adjudication of guilt of a  
16 defendant of a capital felony under s. 893.135, or upon a  
17 pretrial motion by the defendant, the court shall conduct a  
18 separate ~~sentencing~~ proceeding to determine whether the  
19 defendant should be sentenced to ~~death or~~ life imprisonment  
20 without consideration of a sentence of death due to the  
21 defendant's allegation that the defendant suffers from mental  
22 retardation. If the court determines, by a preponderance of  
23 the evidence, that the defendant suffers from mental  
24 retardation, the court shall sentence the defendant to life  
25 imprisonment. The determination shall be made by the trial  
26 judge without the jury. The court shall enter a written order  
27 that outlines its findings of fact and conclusions of law to  
28 justify the determination of mental retardation. A  
29 determination of mental retardation under this paragraph is  
30 not an adjudication of incompetence or a dismissal of any  
31 criminal charge or conviction.

1           (b) The state may appeal, pursuant to s. 924.07, a  
2 determination of mental retardation made under paragraph (a).

3           (c) If a convicted capital felon waives the right to  
4 proceed under paragraph (a) or if the court determines that a  
5 convicted capital felon does not suffer from mental  
6 retardation as provided in paragraph (a), the court shall  
7 conduct a separate proceeding to determine whether the  
8 convicted capital felon should be sentenced to death or life  
9 imprisonment as authorized by s. 775.082. The proceeding  
10 shall be conducted by the trial judge before the trial jury as  
11 soon as practicable. If, through impossibility or inability,  
12 the trial jury is unable to reconvene for a hearing on the  
13 issue of penalty, having determined the guilt of the accused,  
14 the trial judge may summon a special juror or jurors as  
15 provided in chapter 913 to determine the issue of the  
16 imposition of the penalty. If the trial jury has been waived,  
17 or if the defendant pleaded guilty, the sentencing proceeding  
18 shall be conducted before a jury impaneled for that purpose,  
19 unless waived by the defendant. In the proceeding, evidence  
20 may be presented as to any matter that the court deems  
21 relevant to the nature of the crime and the character of the  
22 defendant and shall include matters relating to any of the  
23 aggravating or mitigating circumstances enumerated in  
24 subsections (6) and (7). Any such evidence that ~~which~~ the  
25 court deems to have probative value may be received,  
26 regardless of its admissibility under the exclusionary rules  
27 of evidence, provided the defendant is accorded a fair  
28 opportunity to rebut any hearsay statements. However, this  
29 subsection does ~~shall not be construed to~~ authorize the  
30 introduction of any evidence secured in violation of the  
31 Constitution of the United States or the Constitution of the

1 State of Florida. The state and the defendant or the  
2 defendant's counsel shall be permitted to present argument for  
3 or against sentence of death.

4 Section 3. Paragraph (m) is added to subsection (1) of  
5 section 924.07, Florida Statutes, to read:

6 924.07 Appeal by state.--

7 (1) The state may appeal from:

8 (m) An order pursuant to s. 921.141(1)(a) or s.  
9 921.142(2)(a) declaring a defendant mentally retarded.

10 Section 4. For purposes of sections 921.141 and  
11 921.142, Florida Statutes, the term "mental retardation" means  
12 significantly subaverage general intellectual functioning  
13 existing concurrently with deficits in adaptive behavior and  
14 manifested during the period from conception to age 18. The  
15 term "significantly subaverage general intellectual  
16 functioning," for the purpose of this definition, means an  
17 intelligence quotient of 55 or less on a standardized  
18 intelligence test specified in the rules of the Department of  
19 Children and Family Services. The term "adaptive behavior,"  
20 for the purpose of this definition, means the effectiveness or  
21 degree with which an individual meets the standards of  
22 personal independence and social responsibility expected of  
23 the individual's age, cultural group, and community.

24 Section 5. This act shall take effect upon becoming a  
25 law.

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SENATE SUMMARY

Requires that the court conduct a separate proceeding without a jury to determine whether a defendant is mentally retarded if the defendant is accused of or convicted of a capital felony. Provides that the defendant be sentenced to life imprisonment if the court determines that the defendant is mentally retarded. Provides that the state may appeal a determination that a defendant accused of or convicted of a capital felony is mentally retarded. Defines the term "mental retardation" for purposes of the act.