

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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WITHDRAWN	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

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

3
4 **Amendment (with title amendment)**

5 Remove lines 97-276 and insert:

6 reasonable doubt, the existence of at least two aggravating
7 factors set forth in subsection (7).

8 (b) The jury shall return findings identifying each
9 aggravating factor found to exist. A finding that two
10 aggravating factors exists must be unanimous. If the jury:

11 1. Does not unanimously find at least two aggravating
12 factors, the defendant is ineligible for a sentence of death.

13 2. Unanimously finds at least two aggravating factors, the
14 defendant is eligible for a sentence of death and the jury shall
15 make a recommendation to the court as to whether the defendant
16 shall be sentenced to life imprisonment without the possibility

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17 of parole or to death. The recommendation shall be based on a
18 weighing of all of the following:

19 a. Whether sufficient aggravating factors exist.

20 b. Whether aggravating factors exist which outweigh the
21 mitigating circumstances found to exist.

22 c. Based on the considerations in sub-subparagraphs a. and
23 b., whether the defendant should be sentenced to life
24 imprisonment without the possibility of parole or to death.

25 (c) If at least eight jurors determine that the defendant
26 should be sentenced to death, the jury's recommendation to the
27 court shall be a sentence of death. If fewer than eight jurors
28 determine that the defendant should be sentenced to death, the
29 jury's recommendation to the court shall be a sentence of life
30 imprisonment without the possibility of parole.

31 (4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

32 (a) If the jury has recommended a sentence of:

33 1. Life imprisonment without the possibility of parole,
34 the court shall impose the recommended sentence of life
35 imprisonment without the possibility of parole.

36 2. Death, the court, after considering each aggravating
37 factor found by the jury and all mitigating circumstances, may
38 impose a sentence of life imprisonment without the possibility
39 of parole or a sentence of death. The court may consider only an
40 aggravating factor that was unanimously found to exist by the
41 jury. The court may impose a sentence of death only if the jury

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42 unanimously found at least two aggravating factors beyond a
43 reasonable doubt.

44 (b) If the defendant waived his or her right to a
45 sentencing proceeding by a jury, the court, after considering
46 all aggravating factors and mitigating circumstances, may impose
47 a sentence of life imprisonment without the possibility of
48 parole or a sentence of death. The court may impose a sentence
49 of death only if the court finds that at least two aggravating
50 factors have been proven to exist beyond a reasonable doubt.

51 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE
52 IMPRISONMENT OR DEATH.- In each case in which the court imposes
53 a sentence of life imprisonment without the possibility of
54 parole or death, the court shall, considering the records of the
55 trial and the sentencing proceedings, enter a written order
56 addressing the aggravating factors set forth in subsection (7)
57 found to exist, the mitigating circumstances in subsection (8)
58 reasonably established by the evidence, whether there are
59 sufficient aggravating factors to warrant the death penalty, and
60 whether the aggravating factors outweigh the mitigating
61 circumstances reasonably established by the evidence. The court
62 shall include in its written order the reasons for not accepting
63 the jury's recommended sentence, if applicable. If the court
64 does not issue its order requiring the death sentence within 30
65 days after the rendition of the judgment and sentence, the court

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66 shall impose a sentence of life imprisonment without the
67 possibility of parole in accordance with s. 775.082.

68 (6) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of
69 conviction and sentence of death shall be subject to automatic
70 review by the Supreme Court and disposition rendered within 2
71 years after the filing of a notice of appeal. Such review by the
72 Supreme Court shall have priority over all other cases and shall
73 be heard in accordance with rules adopted by the Supreme Court.

74 (7) AGGRAVATING FACTORS.—Aggravating factors shall be
75 limited to the following:

76 (a) The capital felony was committed by a person
77 previously convicted of a felony violation of s. 794.011, and
78 under sentence of imprisonment or placed on community control or
79 on felony probation.

80 (b) The defendant was previously convicted of another
81 capital felony or of a felony involving the use or threat of
82 violence to the person.

83 (c) The capital felony was committed by a person
84 designated as a sexual predator pursuant to s. 775.21 or a
85 person previously designated as a sexual predator who had the
86 sexual predator designation removed.

87 (d) The capital felony was committed by a sexual offender
88 who is required to register pursuant to s. 943.0435 or a person
89 previously required to register as a sexual offender who had
90 such requirement removed.

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91 (e) The defendant knowingly created a great risk of death
92 to one or more persons such that participation in the offense
93 constituted reckless indifference or disregard for human life.

94 (f) The defendant used a firearm or knowingly directed,
95 advised, authorized, or assisted another to use a firearm to
96 threaten, intimidate, assault, or injure a person in committing
97 the offense or in furtherance of the offense.

98 (g) The capital felony was committed for pecuniary gain.

99 (h) The capital felony was especially heinous, atrocious,
100 or cruel.

101 (i) The victim of the capital felony was particularly
102 vulnerable due to age or disability, or because the defendant
103 stood in a position of familial or custodial authority over the
104 victim.

105 (j) The capital felony was committed by a person subject
106 to an injunction issued pursuant to s. 741.30 or s. 784.046, or
107 a foreign protection order accorded full faith and credit
108 pursuant to s. 741.315, and was committed against the petitioner
109 who obtained the injunction or protection order or any spouse,
110 child, sibling, or parent of the petitioner.

111 (k) The victim of the capital felony sustained serious
112 bodily injury.

113 (8) MITIGATING CIRCUMSTANCES.—Mitigating circumstances
114 shall be the following:

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115 (a) The defendant has no significant history of prior
116 criminal activity.

117 (b) The capital felony was committed while the defendant
118 was under the influence of extreme mental or emotional
119 disturbance.

120 (c) The defendant was an accomplice in the capital felony
121 committed by another person and his or her participation was
122 relatively minor.

123 (d) The defendant acted under extreme duress or under the
124 substantial domination of another person.

125 (e) The capacity of the defendant to appreciate the
126 criminality of his or her conduct or to conform his or her
127 conduct to the requirements of law was substantially impaired.

128 (f) The age of the defendant at the time of the crime.

129 (g) The existence of any other factors in the defendant's
130 background that would mitigate against imposition of the death
131 penalty.

132 (9) VICTIM IMPACT EVIDENCE.—Once the prosecution has
133 provided evidence of the existence of two or more aggravating
134 factors as described in subsection (7), the prosecution may
135 introduce, and subsequently argue, victim impact evidence to the
136 jury. Such evidence shall be designed to demonstrate the
137 victim's uniqueness as an individual human being and the
138 physical and psychological harm to the victim. Characterizations
139 and opinions about the crime, the defendant, and the appropriate

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140 sentence shall not be permitted as a part of victim impact
141 evidence.

142 (10) CONSTITUTIONALITY.—Notwithstanding s. 775.082(2) or
143 s. 775.15, or any other provision of law, a sentence of death
144 shall be imposed under this section notwithstanding existing
145 case law which holds such a sentence is unconstitutional under
146 the Florida Constitution and the United States Constitution. In
147 any case for which the Florida Supreme Court or the United
148 States Supreme Court reviews a sentence of death imposed
149 pursuant to this section, and in making such a review
150 reconsiders the prior holdings in *Buford v. State* and *Kennedy v.*
151 *Louisiana*, and determines a sentence of death remains
152 unconstitutional, the court having jurisdiction over the person
153 previously sentenced to death shall cause such person to be
154 brought before the court, and the court shall sentence such
155 person to life imprisonment as provided in s. 775.082(1).

156 (11) APPLICABILITY.—This section applies to any capital
157 felony under s. 794.011, that is committed on or after October
158 1, 2023.

159 Section 3. Subsection (4) of section 921.137, Florida
160 Statutes, is amended to read:

161 921.137 Imposition of the death sentence upon an
162 intellectually disabled defendant prohibited.—

163 (4) After a defendant who has given notice of his or her
164 intention to raise intellectual disability as a bar to the death

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165 sentence is convicted of a capital felony and an advisory jury
166 has returned a recommended sentence of death, the defendant may
167 file a motion to determine whether the defendant is
168 intellectually disabled. Upon receipt of the motion, the court
169 shall appoint two experts in the field of intellectual
170 disabilities who shall evaluate the defendant and report their
171 findings to the court and all interested parties prior to the
172 final sentencing hearing. Notwithstanding s. 921.141, ~~or~~ s.
173 921.142, or s. 921.1425, the final sentencing hearing shall be
174 held without a jury. At the final sentencing hearing, the court
175 shall consider the findings of the court-appointed experts and
176 consider the findings of any other expert which is offered by
177 the state or the defense on the issue of whether the defendant
178 has an intellectual disability. If the court finds, by clear and
179 convincing evidence, that the defendant has an intellectual
180 disability as defined in subsection (1), the court may not
181 impose a sentence of death and shall enter a written order that
182 sets forth with specificity the findings in support of the
183 determination.

184 Section 4. Subsection (9) of section 921.141, Florida
185 Statutes, is amended to read:

186 921.141 Sentence of death or life imprisonment for capital
187 felonies; further proceedings to determine sentence.—

188 (9) APPLICABILITY.—This section does not apply to a person
189 convicted or adjudicated guilty of a capital sexual battery

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190 under s. 794.011 or a capital drug trafficking felony under s.
191 893.135.

192 Section 5. Paragraph (e) of subsection (1) of section
193 924.07, Florida Statutes, is amended to read:

194 924.07 Appeal by state.—

195 (1) The state may appeal from:

196 (e) The sentence, on the ground that it is illegal or that
197 it resulted from the circuit court's failure to comply with
198 sentencing procedures under s. 921.1425, including by striking a
199 notice of intent to seek the death penalty, refusing to impanel
200 a capital jury, or otherwise granting relief that prevents the
201 state from seeking a sentence of death.

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

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Remove line 18 and insert:

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provisions to changes made by the act; amending s. 924.07, F.S.;

207

authorizing the state to appeal from a sentence on the grounds

208

that it resulted from the failure of the circuit court to comply

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with specified sentencing procedure requirements; providing an