

1 A bill to be entitled
2 An act relating to capital sexual battery; amending s.
3 794.011, F.S.; providing for death sentences for
4 certain child sexual offenders; creating s. 921.1425,
5 F.S.; providing legislative intent concerning capital
6 punishment for certain child sexual offenders;
7 providing for separate death penalty proceedings in
8 such cases; providing for findings and recommended
9 sentences by a jury; providing for imposition of
10 sentence of life imprisonment or death; providing
11 requirements for a court order in support of a death
12 sentence; providing for automatic review of sentences
13 of death; specifying aggravating factors and
14 mitigating circumstances; providing for victim impact
15 evidence; providing for resentencing if provisions are
16 found to be unconstitutional; providing applicability;
17 amending ss. 921.137 and 921.141, F.S.; conforming
18 provisions to changes made by the act; providing an
19 effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraph (a) of subsection (2) of section
24 794.011, Florida Statutes, is amended to read:

25 794.011 Sexual battery.—

26 (2) (a) A person 18 years of age or older who commits
 27 sexual battery upon, or in an attempt to commit sexual battery
 28 injures the sexual organs of, a person less than 12 years of age
 29 commits a capital felony, punishable as provided in ss. 775.082
 30 and 921.1425. In all capital cases under this section, the
 31 procedure set forth in s. 921.1425 shall be followed in order to
 32 determine a sentence of death or life imprisonment. If the
 33 prosecutor intends to seek the death penalty, the prosecutor
 34 must give notice to the defendant and file the notice with the
 35 court within 45 days after arraignment. The notice must contain
 36 a list of the aggravating factors the state intends to prove and
 37 has reason to believe it can prove beyond a reasonable doubt.
 38 The court may allow the prosecutor to amend the notice upon a
 39 showing of good cause ~~921.141~~.

40 Section 2. Section 921.1425, Florida Statutes, is created
 41 to read:

42 921.1425 Sentence of death or life imprisonment for
 43 capital sexual battery; further proceedings to determine
 44 sentence.—

45 (1) INTENT.—

46 (a) The Legislature finds that a person who commits a
 47 sexual battery upon, or in an attempt to commit sexual battery
 48 injures the sexual organs of, a person less than 12 years of age
 49 carries a great risk of death and danger to vulnerable members
 50 of this state. Such crimes destroy the innocence of a young

51 child and violate all standards of decency held by civilized
52 society. The Legislature further finds that *Buford v. State of*
53 *Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, and
54 that *Kennedy v. Louisiana*, 554 U.S. 407, (2008), was wrongly
55 decided and an egregious infringement of the states' power to
56 punish the most heinous of crimes.

57 (b) It is the intent of the Legislature that the procedure
58 set forth in this section shall be followed, and a prosecutor
59 must file notice, as provided in s. 794.011(2)(a), if he or she
60 intends to seek the death penalty.

61 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon
62 conviction or adjudication of guilt of a defendant of a capital
63 felony under s. 794.011, the court shall conduct a separate
64 sentencing proceeding to determine whether the defendant should
65 be sentenced to death or life imprisonment as authorized by s.
66 775.082. The proceeding shall be conducted by the trial judge
67 before the trial jury as soon as practicable. If, through
68 impossibility or inability, the trial jury is unable to
69 reconvene for a hearing on the issue of penalty, having
70 determined the guilt of the accused, the trial judge may summon
71 a special juror or jurors as provided in chapter 913 to
72 determine the issue of the imposition of the penalty. If the
73 trial jury has been waived, or if the defendant pleaded guilty,
74 the sentencing proceeding shall be conducted before a jury
75 impaneled for that purpose, unless waived by the defendant. In

76 the proceeding, evidence may be presented as to any matter that
77 the court deems relevant to the nature of the crime and the
78 character of the defendant and shall include matters relating to
79 any of the aggravating factors enumerated in subsection (7) and
80 for which notice has been provided pursuant to s. 794.011(2) (a)
81 or mitigating circumstances enumerated in subsection (8). Any
82 such evidence that the court deems to have probative value may
83 be received, regardless of its admissibility under the
84 exclusionary rules of evidence, provided the defendant is
85 accorded a fair opportunity to rebut any hearsay statements.
86 However, this subsection shall not be construed to authorize the
87 introduction of any evidence secured in violation of the United
88 States Constitution or the Florida Constitution. The state and
89 the defendant or the defendant's counsel shall be permitted to
90 present argument for or against a sentence of death.

91 (3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This
92 subsection applies only if the defendant has not waived his or
93 her right to a sentencing proceeding by a jury.

94 (a) After hearing all of the evidence presented regarding
95 aggravating factors and mitigating circumstances, the jury shall
96 deliberate and determine if the state has proven, beyond a
97 reasonable doubt, the existence of at least one aggravating
98 factor set forth in subsection (7).

99 (b) The jury shall return findings identifying each
100 aggravating factor found to exist. A finding that an aggravating

101 factor exists must be unanimous. If the jury:

102 1. Does not unanimously find at least one aggravating

103 factor, the defendant is ineligible for a sentence of death.

104 2. Unanimously finds at least one aggravating factor, the

105 defendant is eligible for a sentence of death and the jury shall

106 make a recommendation to the court as to whether the defendant

107 shall be sentenced to life imprisonment without the possibility

108 of parole or to death. The recommendation shall be based on a

109 weighing of all of the following:

110 a. Whether sufficient aggravating factors exist.

111 b. Whether aggravating factors exist which outweigh the

112 mitigating circumstances found to exist.

113 c. Based on the considerations in sub-subparagraphs a. and

114 b., whether the defendant should be sentenced to life

115 imprisonment without the possibility of parole or to death.

116 (c) If at least eight jurors determine that the defendant

117 should be sentenced to death, the jury's recommendation to the

118 court shall be a sentence of death. If fewer than eight jurors

119 determine that the defendant should be sentenced to death, the

120 jury's recommendation to the court shall be a sentence of life

121 imprisonment without the possibility of parole.

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

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

124 1. Life imprisonment without the possibility of parole,

125 the court shall impose the recommended sentence of life

126 imprisonment without the possibility of parole.

127 2. Death, the court shall impose the recommended sentence
128 of death. The court may only impose a sentence of death if the
129 jury unanimously found at least one aggravating factor beyond a
130 reasonable doubt.

131 (b) If the defendant waived his or her right to a
132 sentencing proceeding by a jury, the court, after considering
133 all aggravating factors and mitigating circumstances, may impose
134 a sentence of life imprisonment without the possibility of
135 parole or a sentence of death. The court may impose a sentence
136 of death only if the court finds that at least one aggravating
137 factor has been proven to exist beyond a reasonable doubt.

138 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—
139 If a defendant waived his or her right to a sentencing
140 proceeding by a jury, and the court imposed a sentence of death
141 under paragraph (4)(b), the court shall, considering the records
142 of the trial and the sentencing proceedings, enter a written
143 order addressing the aggravating factors set forth in subsection
144 (7) found to exist, the mitigating circumstances in subsection
145 (8) reasonably established by the evidence, whether there are
146 sufficient aggravating factors to warrant the death penalty, and
147 whether the aggravating factors outweigh the mitigating
148 circumstances reasonably established by the evidence. If the
149 court does not issue its order requiring the death sentence
150 within 30 days after the rendition of the judgment and sentence,

151 the court shall impose a sentence of life imprisonment without
152 the possibility of parole in accordance with s. 775.082.

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

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

161 (a) The capital felony was committed by a person
162 previously convicted of a felony violation of s. 794.011, and
163 under sentence of imprisonment or placed on community control or
164 on felony probation.

165 (b) The defendant was previously convicted of another
166 capital felony or of a felony involving the use or threat of
167 violence to the person.

168 (c) The capital felony was committed by a person
169 designated as a sexual predator pursuant to s. 775.21 or a
170 person previously designated as a sexual predator who had the
171 sexual predator designation removed.

172 (d) The capital felony was committed by a sexual offender
173 who is required to register pursuant to s. 943.0435 or a person
174 previously required to register as a sexual offender who had
175 such requirement removed.

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

179 (f) The defendant used a firearm or knowingly directed,
180 advised, authorized, or assisted another to use a firearm to
181 threaten, intimidate, assault, or injure a person in committing
182 the offense or in furtherance of the offense.

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

184 (h) The capital felony was especially heinous, atrocious,
185 or cruel.

186 (i) The victim of the capital felony was particularly
187 vulnerable due to age or disability, or because the defendant
188 stood in a position of familial or custodial authority over the
189 victim.

190 (j) The capital felony was committed by a person subject
191 to an injunction issued pursuant to s. 741.30 or s. 784.046, or
192 a foreign protection order accorded full faith and credit
193 pursuant to s. 741.315, and was committed against the petitioner
194 who obtained the injunction or protection order or any spouse,
195 child, sibling, or parent of the petitioner.

196 (k) The victim of the capital felony sustained serious
197 bodily injury.

198 (8) MITIGATING CIRCUMSTANCES.—Mitigating circumstances
199 shall be the following:

200 (a) The defendant has no significant history of prior

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201 criminal activity.

202 (b) The capital felony was committed while the defendant
203 was under the influence of extreme mental or emotional
204 disturbance.

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

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

210 (e) The capacity of the defendant to appreciate the
211 criminality of his or her conduct or to conform his or her
212 conduct to the requirements of law was substantially impaired.

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

214 (g) The existence of any other factors in the defendant's
215 background that would mitigate against imposition of the death
216 penalty.

217 (9) VICTIM IMPACT EVIDENCE.—Once the prosecution has
218 provided evidence of the existence of one or more aggravating
219 factors as described in subsection (7), the prosecution may
220 introduce, and subsequently argue, victim impact evidence to the
221 jury. Such evidence shall be designed to demonstrate the
222 victim's uniqueness as an individual human being and the
223 physical and psychological harm to the victim. Characterizations
224 and opinions about the crime, the defendant, and the appropriate
225 sentence shall not be permitted as a part of victim impact

226 evidence.

227 (10) CONSTITUTIONALITY.—Notwithstanding s. 775.082(2) or
 228 s. 775.15, or any other provision of law, a sentence of death
 229 shall be imposed under this section notwithstanding existing
 230 case law which holds such a sentence is unconstitutional under
 231 the Florida Constitution and the United States Constitution. In
 232 any case for which the Florida Supreme Court or the United
 233 States Supreme Court reviews a sentence of death imposed
 234 pursuant to this section, and in making such a review
 235 reconsiders the prior holdings in *Buford v. State* and *Kennedy v.*
 236 *Louisiana*, and determines a sentence of death remains
 237 unconstitutional, the court having jurisdiction over the person
 238 previously sentenced to death shall cause such person to be
 239 brought before the court, and the court shall sentence such
 240 person to life imprisonment as provided in s. 775.082(1).

241 (11) APPLICABILITY.—This section applies to any capital
 242 felony under s. 794.011, that is committed on or after October
 243 1, 2023.

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

246 921.137 Imposition of the death sentence upon an
 247 intellectually disabled defendant prohibited.—

248 (4) After a defendant who has given notice of his or her
 249 intention to raise intellectual disability as a bar to the death
 250 sentence is convicted of a capital felony and an advisory jury

251 has returned a recommended sentence of death, the defendant may
252 file a motion to determine whether the defendant is
253 intellectually disabled. Upon receipt of the motion, the court
254 shall appoint two experts in the field of intellectual
255 disabilities who shall evaluate the defendant and report their
256 findings to the court and all interested parties prior to the
257 final sentencing hearing. Notwithstanding s. 921.141, ~~or~~ s.
258 921.142, or s. 921.1425, the final sentencing hearing shall be
259 held without a jury. At the final sentencing hearing, the court
260 shall consider the findings of the court-appointed experts and
261 consider the findings of any other expert which is offered by
262 the state or the defense on the issue of whether the defendant
263 has an intellectual disability. If the court finds, by clear and
264 convincing evidence, that the defendant has an intellectual
265 disability as defined in subsection (1), the court may not
266 impose a sentence of death and shall enter a written order that
267 sets forth with specificity the findings in support of the
268 determination.

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

271 921.141 Sentence of death or life imprisonment for capital
272 felonies; further proceedings to determine sentence.—

273 (9) APPLICABILITY.—This section does not apply to a person
274 convicted or adjudicated guilty of a capital sexual battery
275 under s. 794.011 or a capital drug trafficking felony under s.

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276 | 893.135.

277 | Section 5. This act shall take effect October 1, 2023.