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LEGISLATIVE ACTION

Senate

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House

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The Committee on Criminal Justice (Ingoglia) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (2), (3), and (4) of section  
921.141, Florida Statutes, are amended to read:

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

(2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This  
subsection applies only if the defendant has not waived his or



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11 her right to a sentencing proceeding by a jury.

12 (a) After hearing all of the evidence presented regarding  
13 aggravating factors and mitigating circumstances, the jury shall  
14 deliberate and determine if the state has proven, beyond a  
15 reasonable doubt, the existence of at least one aggravating  
16 factor set forth in subsection (6).

17 (b) The jury shall return findings identifying each  
18 aggravating factor found to exist. A finding that an aggravating  
19 factor exists must be unanimous. If the jury:

20 1. Does not unanimously find at least one aggravating  
21 factor, the defendant is ineligible for a sentence of death.

22 2. Unanimously finds at least one aggravating factor, the  
23 defendant is eligible for a sentence of death and the jury shall  
24 make a recommendation to the court as to whether the defendant  
25 shall be sentenced to life imprisonment without the possibility  
26 of parole or to death. The recommendation shall be based on a  
27 weighing of all of the following:

28 a. Whether sufficient aggravating factors exist.

29 b. Whether aggravating factors exist which outweigh the  
30 mitigating circumstances found to exist.

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

34 (c) If at least eight jurors determine ~~a unanimous jury~~  
35 ~~determines~~ that the defendant should be sentenced to death, the  
36 jury's recommendation to the court must ~~shall~~ be a sentence of  
37 death. If fewer than eight jurors ~~a unanimous jury does not~~  
38 determine that the defendant should be sentenced to death, the  
39 jury's recommendation to the court must ~~shall~~ be a sentence of



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40 life imprisonment without the possibility of parole.

41 (3) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

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

43 1. Life imprisonment without the possibility of parole, the  
44 court shall impose the recommended sentence of life.

45 2. Death, the court must impose the recommended sentence of  
46 death. The court may impose a sentence of death only if the jury  
47 unanimously finds at least one aggravating factor beyond a  
48 reasonable doubt, after considering each aggravating factor  
49 found by the jury and all mitigating circumstances, may impose a  
50 sentence of life imprisonment without the possibility of parole  
51 or a sentence of death. The court may consider only an  
52 aggravating factor that was unanimously found to exist by the  
53 jury.

54 (b) If the defendant waived his or her right to a  
55 sentencing proceeding by a jury, the court, after considering  
56 all aggravating factors and mitigating circumstances, may impose  
57 a sentence of life imprisonment without the possibility of  
58 parole or a sentence of death. The court may impose a sentence  
59 of death only if the court finds that at least one aggravating  
60 factor has been proven to exist beyond a reasonable doubt.

61 (4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—If  
62 a defendant waived his or her right to a sentencing proceeding  
63 by a jury, and the court imposes a sentence of death under  
64 paragraph (3) (b) In each case in which the court imposes a  
65 sentence of death, the court shall, considering the records of  
66 the trial and the sentencing proceedings, enter a written order  
67 addressing the aggravating factors set forth in subsection (6)  
68 found to exist, the mitigating circumstances in subsection (7)



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69 reasonably established by the evidence, whether there are  
70 sufficient aggravating factors to warrant the death penalty, and  
71 whether the aggravating factors outweigh the mitigating  
72 circumstances reasonably established by the evidence. If the  
73 court does not issue its order requiring the death sentence  
74 within 30 days after the rendition of the judgment and sentence,  
75 the court shall impose a sentence of life imprisonment without  
76 the possibility of parole in accordance with s. 775.082.

77 Section 2. Subsections (3), (4), and (5) of section  
78 921.142, Florida Statutes, are amended to read:

79 921.142 Sentence of death or life imprisonment for capital  
80 drug trafficking felonies; further proceedings to determine  
81 sentence.—

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

85 (a) After hearing all of the evidence presented regarding  
86 aggravating factors and mitigating circumstances, the jury shall  
87 deliberate and determine if the state has proven, beyond a  
88 reasonable doubt, the existence of at least one aggravating  
89 factor set forth in subsection (7).

90 (b) The jury shall return findings identifying each  
91 aggravating factor found to exist. A finding that an aggravating  
92 factor exists must be unanimous. If the jury:

93 1. Does not unanimously find at least one aggravating  
94 factor, the defendant is ineligible for a sentence of death.

95 2. Unanimously finds at least one aggravating factor, the  
96 defendant is eligible for a sentence of death and the jury shall  
97 make a recommendation to the court as to whether the defendant



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98 shall be sentenced to life imprisonment without the possibility  
99 of parole or to death. The recommendation shall be based on a  
100 weighing of all of the following:

101 a. Whether sufficient aggravating factors exist.

102 b. Whether aggravating factors exist which outweigh the  
103 mitigating circumstances found to exist.

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

107 (c) If at least eight jurors determine ~~a unanimous jury~~  
108 ~~determines~~ that the defendant should be sentenced to death, the  
109 jury's recommendation to the court must ~~shall~~ be a sentence of  
110 death. If fewer than eight jurors ~~a unanimous jury does not~~  
111 determine that the defendant should be sentenced to death, the  
112 jury's recommendation to the court must ~~shall~~ be a sentence of  
113 life imprisonment without the possibility of parole.

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

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

116 1. Life imprisonment without the possibility of parole, the  
117 court shall impose the recommended sentence of life.

118 2. Death, the court must impose the recommended sentence of  
119 death. The court may impose a sentence of death only if the jury  
120 unanimously finds at least one aggravating factor beyond a  
121 reasonable doubt, ~~after considering each aggravating factor~~  
122 ~~found by the jury and all mitigating circumstances, may impose a~~  
123 ~~sentence of life imprisonment without the possibility of parole~~  
124 ~~or a sentence of death. The court may consider only an~~  
125 ~~aggravating factor that was unanimously found to exist by the~~  
126 ~~jury.~~



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

134 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—If  
135 a defendant waived his or her right to a sentencing proceeding  
136 by a jury, and the court imposes a sentence of death under  
137 paragraph (4) (b) In each case in which the court imposes a death  
138 sentence, the court shall, considering the records of the trial  
139 and the sentencing proceedings, enter a written order addressing  
140 the aggravating factors set forth in subsection (7) found to  
141 exist, the mitigating circumstances in subsection (8) reasonably  
142 established by the evidence, whether there are sufficient  
143 aggravating factors to warrant the death penalty, and whether  
144 the aggravating factors outweigh the mitigating circumstances  
145 reasonably established by the evidence. If the court does not  
146 issue its order requiring the death sentence within 30 days  
147 after the rendition of the judgment and sentence, the court  
148 shall impose a sentence of life imprisonment without the  
149 possibility of parole in accordance with s. 775.082.

150 Section 3. This act shall take effect upon becoming a law.

151

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

153 And the title is amended as follows:

154 Delete everything before the enacting clause  
155 and insert:



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156                                   A bill to be entitled  
157           An act relating to the death penalty; amending ss.  
158           921.141 and 921.142, F.S.; requiring a determination  
159           of a specified number of jurors, rather than jury  
160           unanimity, for a sentencing recommendation of death to  
161           the court for capital felonies and capital drug  
162           trafficking felonies, respectively; requiring a  
163           determination of a specified number of jurors, rather  
164           than jury unanimity, for a sentencing recommendation  
165           of life imprisonment without the possibility of parole  
166           to the court; requiring the court to impose the  
167           recommended sentence of death if the jury has  
168           recommended a sentence of death; specifying that the  
169           court may impose a sentence of death only if the jury  
170           unanimously finds at least one aggravating factor  
171           beyond a reasonable doubt; providing an effective  
172           date.