

By Senators Rossin, Crist, Williams and Latvala

35-980-98

See HB

1 A bill to be entitled
2 An act relating to punishment of capital
3 felons; amending s. 921.141, F.S., relating to
4 further proceedings to determine sentence of
5 death or life imprisonment for capital
6 felonies; providing additional aggravating
7 circumstances to be weighed by the court;
8 providing for an aggravating circumstance that
9 the capital felony was committed when the
10 victim had an injunction for protection against
11 domestic violence or repeat violence in effect
12 against the defendant; providing for an
13 aggravating circumstance that the defendant
14 inflicted multiple physical injuries upon the
15 victim; providing for an aggravating
16 circumstance that the defendant mutilated or
17 dismembered the victim's dead body or sexually
18 or grossly abused the victim's dead body,
19 during or after commission of the capital
20 felony; providing for an aggravating
21 circumstance that the victim of a homicide had
22 asked that his or her life be spared; providing
23 an effective date.

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

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27 Section 1. Section 921.141, Florida Statutes, is
28 amended to read:
29 921.141 Sentence of death or life imprisonment for
30 capital felonies; further proceedings to determine sentence.--
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1 (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon
2 conviction or adjudication of guilt of a defendant of a
3 capital felony, the court shall conduct a separate sentencing
4 proceeding to determine whether the defendant should be
5 sentenced to death or life imprisonment as authorized by s.
6 775.082. The proceeding shall be conducted by the trial judge
7 before the trial jury as soon as practicable. If, through
8 impossibility or inability, the trial jury is unable to
9 reconvene for a hearing on the issue of penalty, having
10 determined the guilt of the accused, the trial judge may
11 summon a special juror or jurors as provided in chapter 913 to
12 determine the issue of the imposition of the penalty. If the
13 trial jury has been waived, or if the defendant pleaded
14 guilty, the sentencing proceeding shall be conducted before a
15 jury impaneled for that purpose, unless waived by the
16 defendant. In the proceeding, evidence may be presented as to
17 any matter that the court deems relevant to the nature of the
18 crime and the character of the defendant and shall include
19 matters relating to any of the aggravating or mitigating
20 circumstances enumerated in subsections (5) and (6). Any such
21 evidence which the court deems to have probative value may be
22 received, regardless of its admissibility under the
23 exclusionary rules of evidence, provided the defendant is
24 accorded a fair opportunity to rebut any hearsay statements.
25 However, this subsection shall not be construed to authorize
26 the introduction of any evidence secured in violation of the
27 Constitution of the United States or the Constitution of the
28 State of Florida. The state and the defendant or the
29 defendant's counsel shall be permitted to present argument for
30 or against sentence of death.
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1 (2) ADVISORY SENTENCE BY THE JURY.--After hearing all
2 the evidence, the jury shall deliberate and render an advisory
3 sentence to the court, based upon the following matters:

4 (a) Whether sufficient aggravating circumstances exist
5 as enumerated in subsection (5);

6 (b) Whether sufficient mitigating circumstances exist
7 which outweigh the aggravating circumstances found to exist;
8 and

9 (c) Based on these considerations, whether the
10 defendant should be sentenced to life imprisonment or death.

11 (3) FINDINGS IN SUPPORT OF SENTENCE OF
12 DEATH.--Notwithstanding the recommendation of a majority of
13 the jury, the court, after weighing the aggravating and
14 mitigating circumstances, shall enter a sentence of life
15 imprisonment or death, but if the court imposes a sentence of
16 death, it shall set forth in writing its findings upon which
17 the sentence of death is based as to the facts:

18 (a) That sufficient aggravating circumstances exist as
19 enumerated in subsection (5), and

20 (b) That there are insufficient mitigating
21 circumstances to outweigh the aggravating circumstances.

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23 In each case in which the court imposes the death sentence,
24 the determination of the court shall be supported by specific
25 written findings of fact based upon the circumstances in
26 subsections (5) and (6) and upon the records of the trial and
27 the sentencing proceedings. If the court does not make the
28 findings requiring the death sentence within 30 days after the
29 rendition of the judgment and sentence, the court shall impose
30 sentence of life imprisonment in accordance with s. 775.082.

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1 (4) REVIEW OF JUDGMENT AND SENTENCE.--The judgment of
2 conviction and sentence of death shall be subject to automatic
3 review by the Supreme Court of Florida and disposition
4 rendered within 2 years after the filing of a notice of
5 appeal. Such review by the Supreme Court shall have priority
6 over all other cases and shall be heard in accordance with
7 rules promulgated by the Supreme Court.

8 (5) AGGRAVATING CIRCUMSTANCES.--Aggravating
9 circumstances shall be limited to the following:

10 (a) The capital felony was committed by a person
11 previously convicted of a felony and under sentence of
12 imprisonment or placed on community control or on felony
13 probation.

14 (b) The defendant was previously convicted of another
15 capital felony or of a felony involving the use or threat of
16 violence to the person.

17 (c) The defendant knowingly created a great risk of
18 death to many persons.

19 (d) The capital felony was committed while the
20 defendant was engaged, or was an accomplice, in the commission
21 of, or an attempt to commit, or flight after committing or
22 attempting to commit, any: robbery; sexual battery; aggravated
23 child abuse; abuse of an elderly person or disabled adult
24 resulting in great bodily harm, permanent disability, or
25 permanent disfigurement; arson; burglary; kidnapping; aircraft
26 piracy; or unlawful throwing, placing, or discharging of a
27 destructive device or bomb.

28 (e) The capital felony was committed for the purpose
29 of avoiding or preventing a lawful arrest or effecting an
30 escape from custody.

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- 1 (f) The capital felony was committed for pecuniary
2 gain.
- 3 (g) The capital felony was committed to disrupt or
4 hinder the lawful exercise of any governmental function or the
5 enforcement of laws.
- 6 (h) The capital felony was especially heinous,
7 atrocious, or cruel.
- 8 (i) The capital felony was a homicide and was
9 committed in a cold, calculated, and premeditated manner
10 without any pretense of moral or legal justification.
- 11 (j) During the course of committing the capital
12 felony, the defendant inflicted multiple physical injuries
13 upon the victim.
- 14 (k) The defendant mutilated or dismembered the
15 victim's dead body or sexually or grossly abused the victim's
16 dead body, during or after commission of the capital felony.
- 17 (l)~~(j)~~ The victim of the capital felony was a law
18 enforcement officer engaged in the performance of his or her
19 official duties.
- 20 (m)~~(k)~~ The victim of the capital felony was an elected
21 or appointed public official engaged in the performance of his
22 or her official duties if the motive for the capital felony
23 was related, in whole or in part, to the victim's official
24 capacity.
- 25 (n)~~(l)~~ The victim of the capital felony was a person
26 less than 12 years of age.
- 27 (o)~~(m)~~ The victim of the capital felony was
28 particularly vulnerable due to advanced age or disability, or
29 because the defendant stood in a position of familial or
30 custodial authority over the victim.
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1 (p) The victim had an injunction for protection
2 against domestic violence or an injunction for protection
3 against repeat violence in effect against the defendant when
4 the capital felony was committed.

5 (q) The victim was aware of the impending homicide and
6 asked that his or her life be spared or otherwise requested
7 that the homicide not occur.

8 ~~(r)(n)~~ The capital felony was committed by a criminal
9 street gang member, as defined in s. 874.03.

10 (6) MITIGATING CIRCUMSTANCES.--Mitigating
11 circumstances shall be the following:

12 (a) The defendant has no significant history of prior
13 criminal activity.

14 (b) The capital felony was committed while the
15 defendant was under the influence of extreme mental or
16 emotional disturbance.

17 (c) The victim was a participant in the defendant's
18 conduct or consented to the act.

19 (d) The defendant was an accomplice in the capital
20 felony committed by another person and his or her
21 participation was relatively minor.

22 (e) The defendant acted under extreme duress or under
23 the substantial domination of another person.

24 (f) The capacity of the defendant to appreciate the
25 criminality of his or her conduct or to conform his or her
26 conduct to the requirements of law was substantially impaired.

27 (g) The age of the defendant at the time of the crime.

28 (h) The existence of any other factors in the
29 defendant's background that would mitigate against imposition
30 of the death penalty.

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