

By Representative Roberts-Burke

1                                   A bill to be entitled  
2           An act relating to the sentencing of capital  
3           felons; amending ss. 921.141, 921.142, F.S.;  
4           providing for a separate proceeding to  
5           determine whether a defendant accused or  
6           convicted or adjudicated guilty of a capital  
7           felony is mentally retarded; providing for  
8           waiver by the defendant; prescribing the  
9           penalty to be imposed if the defendant is  
10          determined to be mentally retarded; amending s.  
11          924.07, F.S.; providing that the state may  
12          appeal the determination that the defendant  
13          accused or convicted or adjudicated guilty of a  
14          capital felony is mentally retarded; providing  
15          an effective date.

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

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

21           921.141 Sentence of death or life imprisonment for  
22 capital felonies; further proceedings to determine sentence.--

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

24           (a) Upon conviction or adjudication of guilt of a  
25 defendant of a capital felony, or upon a pretrial motion by  
26 the defendant, the court shall conduct a separate ~~sentencing~~  
27 proceeding, unless waived by the defendant, to determine  
28 whether the defendant suffers from mental retardation, as  
29 defined in s. 916.106. The proceeding shall be conducted  
30 without consideration of a sentence of death due to the  
31 defendant's allegation that the defendant suffers from mental

1 retardation, as defined in s. 916.106. If the court  
2 determines, by a preponderance of the evidence, that the  
3 defendant suffers from mental retardation, as defined in s.  
4 916.106, upon conviction or adjudication of guilt of the  
5 defendant of the capital felony, the court shall sentence the  
6 defendant to life imprisonment. The determination shall be  
7 made by the trial judge without the jury. The court shall  
8 enter a written order that outlines its findings of fact and  
9 conclusions of law to justify the determination of mental  
10 retardation. A determination of mental retardation under this  
11 paragraph is not an adjudication of incompetence or a  
12 dismissal of any criminal charge or conviction.

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

15 (c) If a convicted or adjudicated capital felon waives  
16 the right to proceed under paragraph (a) or if the court  
17 determines that a convicted or adjudicated capital felon does  
18 not suffer from mental retardation as provided in paragraph  
19 (a), the court shall conduct a separate proceeding to  
20 determine whether the capital felon should be sentenced to  
21 death or life imprisonment as authorized by s. 775.082. The  
22 proceeding shall be conducted by the trial judge before the  
23 trial jury as soon as practicable. If, through impossibility  
24 or inability, the trial jury is unable to reconvene for a  
25 hearing on the issue of penalty, having determined the guilt  
26 of the accused, the trial judge may summon a special juror or  
27 jurors as provided in chapter 913 to determine the issue of  
28 the imposition of the penalty. If the trial jury has been  
29 waived, or if the defendant pleaded guilty, the sentencing  
30 proceeding shall be conducted before a jury impaneled for that  
31 purpose, unless waived by the defendant. In the proceeding,

1 evidence may be presented as to any matter that the court  
2 deems relevant to the nature of the crime and the character of  
3 the defendant and shall include matters relating to any of the  
4 aggravating or mitigating circumstances enumerated in  
5 subsections (5) and (6). Any such evidence that ~~which~~ the  
6 court deems to have probative value may be received,  
7 regardless of its admissibility under the exclusionary rules  
8 of evidence, provided the defendant is accorded a fair  
9 opportunity to rebut any hearsay statements. However, this  
10 subsection does ~~shall not be construed to~~ authorize the  
11 introduction of any evidence secured in violation of the  
12 Constitution of the United States or the Constitution of the  
13 State of Florida. The state and the defendant or the  
14 defendant's counsel shall be permitted to present argument for  
15 or against sentence of death.

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

18 921.142 Sentence of death or life imprisonment for  
19 capital drug trafficking felonies; further proceedings to  
20 determine sentence.--

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

22 (a) Upon conviction or adjudication of guilt of a  
23 defendant of a capital felony under s. 893.135, or upon a  
24 pretrial motion by the defendant, the court shall conduct a  
25 separate ~~sentencing~~ proceeding, unless waived by the  
26 defendant, to determine whether the defendant suffers from  
27 mental retardation, as defined in s. 916.106. The proceeding  
28 shall be conducted without consideration of a sentence of  
29 death due to the defendant's allegation that the defendant  
30 suffers from mental retardation, as defined in s. 916.106. If  
31 the court determines, by a preponderance of the evidence, that

1 the defendant suffers from mental retardation, as defined in  
2 s. 916.106, upon conviction or adjudication of guilt of the  
3 defendant of the capital felony, the court shall sentence the  
4 defendant to life imprisonment. The determination shall be  
5 made by the trial judge without the jury. The court shall  
6 enter a written order that outlines its findings of fact and  
7 conclusions of law to justify the determination of mental  
8 retardation. A determination of mental retardation under this  
9 paragraph is not an adjudication of incompetence or a  
10 dismissal of any criminal charge or conviction.

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

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

1 the defendant and shall include matters relating to any of the  
2 aggravating or mitigating circumstances enumerated in  
3 subsections (6) and (7). Any such evidence that ~~which~~ the  
4 court deems to have probative value may be received,  
5 regardless of its admissibility under the exclusionary rules  
6 of evidence, provided the defendant is accorded a fair  
7 opportunity to rebut any hearsay statements. However, this  
8 subsection does ~~shall not be construed to~~ authorize the  
9 introduction of any evidence secured in violation of the  
10 Constitution of the United States or the Constitution of the  
11 State of Florida. The state and the defendant or the  
12 defendant's counsel shall be permitted to present argument for  
13 or against sentence of death.

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

16 924.07 Appeal by state.--

17 (1) The state may appeal from:

18 (m) An order pursuant to s. 921.141(1)(a) or s.  
19 921.142(2)(a) declaring a defendant mentally retarded.

20 Section 4. This act shall take effect July 1 of the  
21 year in which enacted.

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24 HOUSE SUMMARY

25 Provides for the court to conduct a separate proceeding  
26 without a jury to determine whether a defendant is  
27 mentally retarded if the defendant is accused or  
28 convicted or adjudicated guilty of a capital felony,  
29 under specified circumstances. Provides for waiver by the  
30 defendant. If the court determines that the defendant is  
31 mentally retarded, requires that the defendant be  
sentenced to life imprisonment upon conviction or  
adjudication of the capital felony. Provides for appeal  
by the state of the determination that the defendant is  
mentally retarded.