

By the Committee on Crime & Punishment and Representative
 Roberts-Burke

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

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (1) of section 921.141, Florida
 18 Statutes, is amended to read:

19 921.141 Sentence of death or life imprisonment for
 20 capital felonies; further proceedings to determine sentence.--

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

22 (a) Upon conviction or adjudication of guilt of a
 23 defendant of a capital felony, or upon a pretrial motion by
 24 the defendant, the court shall conduct a separate ~~sentencing~~
 25 proceeding to determine whether the defendant is mentally
 26 retarded, unless the defendant waives the right to this
 27 proceeding. The proceeding shall be conducted without
 28 consideration of a sentence of death. If the court determines,
 29 by a preponderance of the evidence, that the defendant suffers
 30 from mental retardation, the court shall sentence the
 31 defendant to life imprisonment without possibility of parole.

1 The determination shall be made by the trial judge without the
2 jury. The court shall enter a written order that outlines its
3 findings of fact and conclusions of law to justify the
4 determination of mental retardation. A determination of mental
5 retardation under this paragraph is not an adjudication of
6 incompetence or a dismissal of any criminal charge or
7 conviction.

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

10 (c) If a convicted capital felon has waived the right
11 to a proceeding to determine whether the defendant is mentally
12 retarded under paragraph (a) or if the court has determined
13 that a convicted capital felon does not suffer from mental
14 retardation as provided in paragraph (a), the court shall
15 conduct a separate proceeding to determine whether the
16 convicted capital felon should be sentenced to death or life
17 imprisonment without possibility of parole ~~should be sentenced~~
18 to death or life imprisonment as authorized by s. 775.082. The
19 proceeding shall be conducted by the trial judge before the
20 trial jury as soon as practicable. If, through impossibility
21 or inability, the trial jury is unable to reconvene for a
22 hearing on the issue of penalty, having determined the guilt
23 of the accused, the trial judge may summon a special juror or
24 jurors as provided in chapter 913 to determine the issue of
25 the imposition of the penalty. If the trial jury has been
26 waived, or if the defendant pleaded guilty, the sentencing
27 proceeding shall be conducted before a jury impaneled for that
28 purpose, unless waived by the defendant. In the proceeding,
29 evidence may be presented as to any matter that the court
30 deems relevant to the nature of the crime and the character of
31 the defendant and shall include matters relating to any of the

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

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

15 921.142 Sentence of death or life imprisonment for
16 capital drug trafficking felonies; further proceedings to
17 determine sentence.--

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

19 (a) Upon conviction or adjudication of guilt of a
20 defendant of a capital felony under s. 893.135, or upon a
21 pretrial motion by the defendant, the court shall conduct a
22 separate ~~sentencing~~ proceeding to determine whether the
23 defendant is mentally retarded, unless the defendant waives
24 the right to this proceeding. The proceeding shall be
25 conducted without consideration of a sentence of death. If the
26 court determines, by a preponderance of the evidence, that the
27 defendant suffers from mental retardation, the court shall
28 sentence the defendant to life imprisonment without
29 possibility of parole. The determination shall be made by the
30 trial judge without the jury. The court shall enter a written
31 order that outlines its findings of fact and conclusions of

1 law to justify the determination of mental retardation. A
2 determination of mental retardation under this paragraph is
3 not an adjudication of incompetence or a dismissal of any
4 criminal charge or conviction.

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

7 (c) If a convicted capital felon has waived the right
8 to a proceeding to determine whether the defendant is mentally
9 retarded under paragraph (a) or if the court has determined
10 that a convicted capital felon does not suffer from mental
11 retardation as provided in paragraph (a), the court shall
12 conduct a separate proceeding to determine whether the
13 convicted capital felon should be sentenced to death or life
14 imprisonment without possibility of parole ~~should be sentenced~~
15 ~~to death or life imprisonment~~ as authorized by s. 775.082.

16 The proceeding shall be conducted by the trial judge before
17 the trial jury as soon as practicable. If, through
18 impossibility or inability, the trial jury is unable to
19 reconvene for a hearing on the issue of penalty, having
20 determined the guilt of the accused, the trial judge may
21 summon a special juror or jurors as provided in chapter 913 to
22 determine the issue of the imposition of the penalty. If the
23 trial jury has been waived, or if the defendant pleaded
24 guilty, the sentencing proceeding shall be conducted before a
25 jury impaneled for that purpose, unless waived by the
26 defendant. In the proceeding, evidence may be presented as to
27 any matter that the court deems relevant to the nature of the
28 crime and the character of the defendant and shall include
29 matters relating to any of the aggravating or mitigating
30 circumstances enumerated in subsections (6) and (7). Any such
31 evidence that ~~which~~ the court deems to have probative value

1 may be received, regardless of its admissibility under the
2 exclusionary rules of evidence, provided the defendant is
3 accorded a fair opportunity to rebut any hearsay statements.
4 However, this subsection does ~~shall~~ not be construed to
5 authorize the introduction of any evidence secured in
6 violation of the Constitution of the United States or the
7 Constitution of the State of Florida. The state and the
8 defendant or the defendant's counsel shall be permitted to
9 present argument for or against sentence of death.

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

12 924.07 Appeal by state.--

13 (1) The state may appeal from:

14 (m) An order pursuant to s. 921.141(1)(a) or s.
15 921.142(2)(a), declaring a defendant mentally retarded.

16 Section 4. For purposes of ss. 921.141 and 921.142,
17 Florida Statutes, the term "mental retardation" means
18 significantly subaverage general intellectual functioning
19 existing concurrently with deficits in adaptive behavior and
20 manifested during the period from conception to age 18. The
21 term "significantly subaverage general intellectual
22 functioning," for the purpose of this definition, means an
23 intelligence quotient of 55 or less on a standardized
24 intelligence test specified in the rules of the Department of
25 Children and Family Services. The term "adaptive behavior,"
26 for the purpose of this definition, means the effectiveness or
27 degree with which an individual meets the standards of
28 personal independence and social responsibility expected of
29 the individual's age, cultural group, and community.

30 Section 5. This act shall take effect July 1 of the
31 year in which enacted.