

Bill No. SB 404
Amendment No. ____

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

5			
6			
7			
8			
9			

10 _____

11 Senators Gutman and Forman moved the following amendment:

12

13 **Senate Amendment (with title amendment)**

14 On page 1, between lines 20 and 21,

15
16 insert:

17 Section 2. 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, the court shall conduct a
24 separate sentencing proceeding to determine whether the
25 defendant should be sentenced to death or life imprisonment as
26 authorized by s. 775.082. The proceeding shall be conducted by
27 the trial judge before the trial jury as soon as practicable.

28 If, through impossibility or inability, the trial jury is
29 unable to reconvene for a hearing on the issue of penalty,
30 having determined the guilt of the accused, the trial judge
31 may summon a special juror or jurors as provided in chapter

Bill No. SB 404

Amendment No. ____

1 913 to determine the issue of the imposition of the penalty.
2 If the trial jury has been waived, or if the defendant pleaded
3 guilty, the sentencing proceeding shall be conducted before a
4 jury impaneled for that purpose, unless waived by the
5 defendant. In the proceeding, evidence may be presented as to
6 any matter that the court deems relevant to the nature of the
7 crime and the character of the defendant and shall include
8 matters relating to any of the aggravating or mitigating
9 circumstances enumerated in subsections (5) and (6). Any such
10 evidence which the court deems to have probative value may be
11 received, regardless of its admissibility under the
12 exclusionary rules of evidence, provided the defendant is
13 accorded a fair opportunity to rebut any hearsay statements.
14 However, this subsection shall not be construed to authorize
15 the introduction of any evidence secured in violation of the
16 Constitution of the United States or the Constitution of the
17 State of Florida. The state and the defendant or the
18 defendant's counsel shall be permitted to present argument for
19 or against sentence of death.

20 (b) If the court determines, by a preponderance of the
21 evidence, that the defendant suffers from mental retardation,
22 and has an IQ less than 55 the court shall sentence the
23 defendant to life imprisonment.

24 Section 3. Subsection (2) of section 921.142, Florida
25 Statutes, is amended to read:

26 921.142 Sentence of death or life imprisonment for
27 capital drug trafficking felonies; further proceedings to
28 determine sentence.--

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

30 (a) Upon conviction or adjudication of guilt of a
31 defendant of a capital felony under s. 893.135, the court

Bill No. SB 404

Amendment No. ____

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

28 (b) If the court determines, by a preponderance of the
29 evidence, that the defendant suffers from mental retardation,
30 and has an IQ less than 55 the court shall sentence the
31 defendant to life imprisonment.

Bill No. SB 404

Amendment No. ____

1 Section 4. Paragraph (m) is added to subsection (1) of
2 section 924.07, Florida Statutes, to read:

3 924.07 Appeal by state.--

4 (1) The state may appeal from:

5 (m) An order pursuant to s. 921.141(1)(a) or s.
6 921.142(2)(a) declaring a defendant mentally retarded.

7 Section 5. For purposes of sections 921.141 and
8 921.142, Florida Statutes, the term "mental retardation" means
9 significantly subaverage general intellectual functioning
10 existing concurrently with deficits in adaptive behavior and
11 manifested during the period from conception to age 18. The
12 term "significantly subaverage general intellectual
13 functioning," for the purpose of this definition, means an
14 intelligence quotient of 55 or less on a standardized
15 intelligence test specified in the rules of the Department of
16 Children and Family Services. The term "adaptive behavior,"
17 for the purpose of this definition, means the effectiveness or
18 degree with which an individual meets the standards of
19 personal independence and social responsibility expected of
20 the individual's age, cultural group, and community.

21
22 (Redesignate subsequent sections.)

23
24

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

26 And the title is amended as follows:

27 On page 1, lines 2-4, delete those lines

28

29 and insert:

30 An act relating to criminal penalties; amending

31 s. 951.23, F.S.; providing a criminal penalty

Bill No. SB 404

Amendment No. ____

1 for refusing to obey jail rules and
2 regulations; amending ss. 921.141, 921.142,
3 F.S.; prescribing the penalty to be imposed if
4 the defendant is determined to be mentally
5 retarded; amending s. 924.07, F.S.; providing
6 that the state may appeal a determination that
7 a defendant is mentally retarded; providing a
8 definition of mental retardation; providing
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31