

209-214XA-38

Bill No. HB 4233

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Crady offered the following:

Amendment (with title amendment)

On page 15, lines 14 and 15,
remove from the bill: all of said lines

and insert in lieu thereof:

Section 9. Sections 9 and 10 of this act may be cited
as the "Jeff Mitchell Act."

Section 10. Subsections (4) and (5) 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.--

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon
conviction or adjudication of guilt of a defendant of a
capital felony, the court shall conduct a separate sentencing
proceeding to determine whether the defendant should be
sentenced to death or life imprisonment as authorized by s.
775.082. The proceeding shall be conducted by the trial judge
before the trial jury as soon as practicable. If, through
impossibility or inability, the trial jury is unable to

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

23 (2) ADVISORY SENTENCE BY THE JURY.--After hearing all
24 the evidence, the jury shall deliberate and render an advisory
25 sentence to the court, based upon the following matters:

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

28 (b) Whether sufficient mitigating circumstances exist
29 which outweigh the aggravating circumstances found to exist;
30 and

31 (c) Based on these considerations, whether the

1 defendant should be sentenced to life imprisonment or death.

2 (3) FINDINGS IN SUPPORT OF SENTENCE OF
3 DEATH.--Notwithstanding the recommendation of a majority of
4 the jury, the court, after weighing the aggravating and
5 mitigating circumstances, shall enter a sentence of life
6 imprisonment or death, but if the court imposes a sentence of
7 death, it shall set forth in writing its findings upon which
8 the sentence of death is based as to the facts:

9 (a) That sufficient aggravating circumstances exist as
10 enumerated in subsection (5), and

11 (b) That there are insufficient mitigating
12 circumstances to outweigh the aggravating circumstances.

13
14 In each case in which the court imposes the death sentence,
15 the determination of the court shall be supported by specific
16 written findings of fact based upon the circumstances in
17 subsections (5) and (6) and upon the records of the trial and
18 the sentencing proceedings. If the court does not make the
19 findings requiring the death sentence within 30 days after the
20 rendition of the judgment and sentence, the court shall impose
21 sentence of life imprisonment in accordance with s. 775.082.

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

29 (a) In any case in which the court has imposed the
30 death sentence, the judgment of conviction and sentence of
31 death shall not be held invalid, overturned, reduced, or

1 otherwise affected because a codefendant in the same case
2 accepted a plea offer from the state in exchange for trial
3 testimony, or an agreement to testify, and was not sentenced
4 to death.

5 (b) No criteria for review by the court regarding
6 aggravating or mitigating circumstances shall be utilized
7 except as authorized in this section. The court shall not
8 engage in any form of proportionality review of a death
9 sentence, including, but not limited to, review of a capital
10 case based on comparable aggravating or mitigating
11 circumstances in other capital cases, based on comparable
12 factors in the defendant's background in other capital cases,
13 or based on the rate of imposition or execution of the death
14 sentence in other capital cases.

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

17 (a) The capital felony was committed by a person
18 previously convicted of a felony and under sentence of
19 imprisonment or placed on community control or on felony
20 probation.

21 (b) The defendant was previously convicted of another
22 capital felony or of a felony involving the use or threat of
23 violence to the person.

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

26 (d) The capital felony was committed while the
27 defendant was engaged, or was an accomplice, in the commission
28 of, or an attempt to commit, or flight after committing or
29 attempting to commit, any: robbery; sexual battery; aggravated
30 child abuse; abuse of an elderly person or disabled adult
31 resulting in great bodily harm, permanent disability, or

1 permanent disfigurement; arson; burglary; kidnapping; aircraft
2 piracy; or unlawful throwing, placing, or discharging of a
3 destructive device or bomb.

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

7 (f) The capital felony was committed for pecuniary
8 gain.

9 (g) The capital felony was committed to disrupt or
10 hinder the lawful exercise of any governmental function or the
11 enforcement of laws.

12 (h) The capital felony was especially heinous,
13 atrocious, or cruel.

14 (i) The capital felony was a homicide and was
15 committed in a cold, calculated, and premeditated manner
16 without any pretense of moral or legal justification.

17 (j) During the course of committing the capital
18 felony, the defendant inflicted multiple physical injuries
19 upon the victim.

20 (k) The defendant mutilated, dismembered, or sexually
21 abused the victim's body, during or after commission of the
22 capital felony.

23 (l)(j) The victim of the capital felony was a law
24 enforcement officer engaged in the performance of his or her
25 official duties.

26 (m)(k) The victim of the capital felony was an elected
27 or appointed public official engaged in the performance of his
28 or her official duties if the motive for the capital felony
29 was related, in whole or in part, to the victim's official
30 capacity.

31 (n)(l) The victim of the capital felony was a person

1 less than 12 years of age.

2 (o)~~(m)~~ The victim of the capital felony was
3 particularly vulnerable due to advanced age or disability, or
4 because the defendant stood in a position of familial or
5 custodial authority over the victim.

6 (p) The victim had an injunction for protection in
7 effect against the defendant when the capital felony was
8 committed.

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

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

14 (6) MITIGATING CIRCUMSTANCES.--Mitigating
15 circumstances shall be the following:

16 (a) The defendant has no significant history of prior
17 criminal activity.

18 (b) The capital felony was committed while the
19 defendant was under the influence of extreme mental or
20 emotional disturbance.

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

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

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

28 (f) The capacity of the defendant to appreciate the
29 criminality of his or her conduct or to conform his or her
30 conduct to the requirements of law was substantially impaired.

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

1 (h) The existence of any other factors in the
2 defendant's background that would mitigate against imposition
3 of the death penalty.

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5 However, the court shall not engage in any form of
6 proportionality review of a death sentence, as prohibited in
7 subsection (4).

8 (7) VICTIM IMPACT EVIDENCE.--Once the prosecution has
9 provided evidence of the existence of one or more aggravating
10 circumstances as described in subsection (5), the prosecution
11 may introduce, and subsequently argue, victim impact evidence.
12 Such evidence shall be designed to demonstrate the victim's
13 uniqueness as an individual human being and the resultant loss
14 to the community's members by the victim's death.
15 Characterizations and opinions about the crime, the defendant,
16 and the appropriate sentence shall not be permitted as a part
17 of victim impact evidence.

18 (8) APPLICABILITY.--This section does not apply to a
19 person convicted or adjudicated guilty of a capital drug
20 trafficking felony under s. 893.135.

21 Section 11. If any provision of this act or the
22 application thereof to any person or circumstance is held
23 invalid, the invalidity shall not affect other provisions or
24 applications of the act which can be given effect without the
25 invalid provision or application, and to this end the
26 provisions of this act are declared severable.

27 Section 12. This act shall take effect October 1 of
28 the year in which enacted.

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Amendment No. ____ (for drafter's use only)

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

2 And the title is amended as follows:

3 remove from the title of the bill: the entire title

4

5 and insert in lieu thereof:

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A bill to be entitled

7

An act relating capital offenses; amending s.

8

782.04, F.S.; redefining the offense of capital

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murder in the first degree to include the act

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of unlawfully killing a human being while

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perpetrating, or attempting to perpetrate, the

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murder of another human being; providing

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penalties; providing that a person who

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perpetrates or attempts to perpetrate a murder

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commits felony murder in the second degree when

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a person is killed by someone other than the

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perpetrator; providing penalties; adding murder

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to the list of felony offenses which do not

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constitute third-degree felony murder;

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reenacting ss. 39.464(1)(d), 435.03(2)(b),

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435.04(2)(b), 775.0823(1) and (2),

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921.0022(3)(i), 943.325(1), and 947.146(3),

23

F.S., relating to the termination of parental

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rights, screening standards, violent offenses

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against law enforcement officers and others,

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the Criminal Punishment Code, blood testing,

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and the Control Release Authority, to

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incorporate the amendment to 782.04, F.S., in

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references thereto; creating the "Jeff Mitchell

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Act"; amending s. 921.141, F.S., relating to

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further proceedings to determine sentence of

1 death or life imprisonment for capital
2 felonies; providing that the judgment of
3 conviction and sentence of death imposed in a
4 capital case are not subject to being held
5 invalid, overturned, reduced, or otherwise
6 affected because a codefendant in the same case
7 accepted a plea offer in exchange for trial
8 testimony, or an agreement to testify, and was
9 not sentenced to death; prohibiting the Florida
10 Supreme Court from engaging in any form of
11 proportionality review of a death sentence;
12 providing that criteria for review regarding
13 aggravating or mitigating circumstances shall
14 not be utilized except as authorized under
15 specified provisions; providing additional
16 aggravating circumstances to be weighed by the
17 court; providing for an aggravating
18 circumstance that the capital felony was
19 committed when the victim had an injunction for
20 protection in effect against the defendant;
21 providing for an aggravating circumstance that
22 the defendant inflicted multiple physical
23 injuries upon the victim; providing for an
24 aggravating circumstance that the defendant
25 mutilated, dismembered, or sexually abused the
26 victim's body, during or after commission of
27 the capital felony; providing for an
28 aggravating circumstance that the victim of a
29 homicide had asked that his or her life be
30 spared; providing for severability; providing
31 an effective date.