

By Representative Crady

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

1           aggravating circumstance that the victim of a  
2           homicide had asked that his or her life be  
3           spared; providing an effective date.  
4

5 Be It Enacted by the Legislature of the State of Florida:  
6

7           Section 1. Subsections (4) and (5) of section 921.141,  
8 Florida Statutes, are amended to read:

9           921.141 Sentence of death or life imprisonment for  
10 capital felonies; further proceedings to determine sentence.--

11           (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon  
12 conviction or adjudication of guilt of a defendant of a  
13 capital felony, the court shall conduct a separate sentencing  
14 proceeding to determine whether the defendant should be  
15 sentenced to death or life imprisonment as authorized by s.  
16 775.082. The proceeding shall be conducted by the trial judge  
17 before 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 (5) and (6). Any such  
31 evidence which the court deems to have probative value may be

1 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 shall not be construed to authorize  
5 the introduction of any evidence secured in violation of the  
6 Constitution of the United States or the Constitution of the  
7 State of Florida. The state and the defendant or the  
8 defendant's counsel shall be permitted to present argument for  
9 or against sentence of death.

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

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

15 (b) Whether sufficient mitigating circumstances exist  
16 which outweigh the aggravating circumstances found to exist;  
17 and

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

20 (3) FINDINGS IN SUPPORT OF SENTENCE OF  
21 DEATH.--Notwithstanding the recommendation of a majority of  
22 the jury, the court, after weighing the aggravating and  
23 mitigating circumstances, shall enter a sentence of life  
24 imprisonment or death, but if the court imposes a sentence of  
25 death, it shall set forth in writing its findings upon which  
26 the sentence of death is based as to the facts:

27 (a) That sufficient aggravating circumstances exist as  
28 enumerated in subsection (5), and

29 (b) That there are insufficient mitigating  
30 circumstances to outweigh the aggravating circumstances.

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

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

16 (a) In any case in which the court has imposed the  
17 death sentence, the judgment of conviction and sentence of  
18 death shall not be held invalid, overturned, reduced, or  
19 otherwise affected because a codefendant in the same case  
20 accepted a plea offer from the state in exchange for trial  
21 testimony, or an agreement to testify, and was not sentenced  
22 to death.

23 (b) No criteria for review by the court regarding  
24 aggravating or mitigating circumstances shall be utilized  
25 except as authorized in this section. The court shall not  
26 engage in any form of proportionality review of a death  
27 sentence, including, but not limited to, review of a capital  
28 case based on comparable aggravating or mitigating  
29 circumstances in other capital cases, based on comparable  
30 factors in the defendant's background in other capital cases,  
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1 or based on the rate of imposition or execution of the death  
2 sentence in other capital cases.

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

5 (a) The capital felony was committed by a person  
6 previously convicted of a felony and under sentence of  
7 imprisonment or placed on community control or on felony  
8 probation.

9 (b) The defendant was previously convicted of another  
10 capital felony or of a felony involving the use or threat of  
11 violence to the person.

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

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

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

26 (f) The capital felony was committed for pecuniary  
27 gain.

28 (g) The capital felony was committed to disrupt or  
29 hinder the lawful exercise of any governmental function or the  
30 enforcement of laws.

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1           (h) The capital felony was especially heinous,  
2 atrocious, or cruel.

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

6           (j) During the course of committing the capital  
7 felony, the defendant inflicted multiple physical injuries  
8 upon the victim.

9           (k) The defendant mutilated, dismembered, or sexually  
10 abused the victim's body, during or after commission of the  
11 capital felony.

12           ~~(l)(j)~~ The victim of the capital felony was a law  
13 enforcement officer engaged in the performance of his or her  
14 official duties.

15           ~~(m)(k)~~ The victim of the capital felony was an elected  
16 or appointed public official engaged in the performance of his  
17 or her official duties if the motive for the capital felony  
18 was related, in whole or in part, to the victim's official  
19 capacity.

20           ~~(n)(l)~~ The victim of the capital felony was a person  
21 less than 12 years of age.

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

26           (p) The victim had an injunction for protection in  
27 effect against the defendant when the capital felony was  
28 committed.

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

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

3           (6) MITIGATING CIRCUMSTANCES.--Mitigating  
4 circumstances shall be the following:

5           (a) The defendant has no significant history of prior  
6 criminal activity.

7           (b) The capital felony was committed while the  
8 defendant was under the influence of extreme mental or  
9 emotional disturbance.

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

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

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

17           (f) The capacity of the defendant to appreciate the  
18 criminality of his or her conduct or to conform his or her  
19 conduct to the requirements of law was substantially impaired.

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

21           (h) The existence of any other factors in the  
22 defendant's background that would mitigate against imposition  
23 of the death penalty.

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25 However, the court shall not engage in any form of  
26 proportionality review of a death sentence, as prohibited in  
27 subsection (4).

28           (7) VICTIM IMPACT EVIDENCE.--Once the prosecution has  
29 provided evidence of the existence of one or more aggravating  
30 circumstances as described in subsection (5), the prosecution  
31 may introduce, and subsequently argue, victim impact evidence.

1 Such evidence shall be designed to demonstrate the victim's  
2 uniqueness as an individual human being and the resultant loss  
3 to the community's members by the victim's death.  
4 Characterizations and opinions about the crime, the defendant,  
5 and the appropriate sentence shall not be permitted as a part  
6 of victim impact evidence.

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

10 Section 2. This act shall take effect upon becoming a  
11 law and shall apply to offenses committed on or after that  
12 date.

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14 HOUSE SUMMARY

15 Provides that the judgment of conviction and sentence of  
16 death imposed in a capital case are not subject to being  
17 held invalid, overturned, reduced, or otherwise affected  
18 because a codefendant in the same case accepted a plea  
19 offer in exchange for trial testimony, or an agreement to  
20 testify, and was not sentenced to death. Prohibits the  
21 Florida Supreme Court from engaging in any form of  
22 proportionality review of a death sentence. Provides that  
23 criteria for review regarding aggravating or mitigating  
24 circumstances shall not be utilized except as authorized  
25 under specified provisions.

26 Provides additional aggravating circumstances to be  
27 weighed by the court for purposes of sentencing capital  
28 felons. Provides for an aggravating circumstance that the  
29 capital felony was committed when the victim had an  
30 injunction for protection in effect against the  
31 defendant. Provides for an aggravating circumstance that  
the defendant inflicted multiple physical injuries upon  
the victim. Provides for an aggravating circumstance that  
the defendant mutilated, dismembered, or sexually abused  
the victim's body, during or after commission of the  
capital felony. Provides for an aggravating circumstance  
that the victim of a homicide had asked that his or her  
life be spared.