

1                   A bill to be entitled  
2           An act relating to punishment of capital  
3           felons; creating the "Jeff Mitchell Act";  
4           amending s. 921.141, F.S., relating to further  
5           proceedings to determine sentence of death or  
6           life imprisonment for capital felonies;  
7           providing that the judgment of conviction and  
8           sentence of death imposed in a capital case are  
9           not subject to being held invalid, overturned,  
10          reduced, or otherwise affected because a  
11          codefendant in the same case accepted a plea  
12          offer in exchange for trial testimony, or an  
13          agreement to testify, and was not sentenced to  
14          death; prohibiting the Florida Supreme Court  
15          from engaging in any form of proportionality  
16          review of a death sentence; providing that  
17          criteria for review regarding aggravating or  
18          mitigating circumstances shall not be utilized  
19          except as authorized under specified  
20          provisions; providing additional aggravating  
21          circumstances to be weighed by the court;  
22          providing for an aggravating circumstance that  
23          the capital felony was committed when the  
24          victim had an injunction for protection in  
25          effect against the defendant; providing for an  
26          aggravating circumstance that the defendant  
27          inflicted multiple physical injuries upon the  
28          victim; providing for an aggravating  
29          circumstance that the defendant mutilated,  
30          dismembered, or sexually abused the victim's  
31          body, during or after commission of the capital

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

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

7  
8 Section 1. This act may be cited as the "Jeff Mitchell  
9 Act."

10 Section 2. Subsections (4) and (5) of section 921.141,  
11 Florida Statutes, are amended to read:

12 921.141 Sentence of death or life imprisonment for  
13 capital felonies; further proceedings to determine sentence.--

14 (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon  
15 conviction or adjudication of guilt of a defendant of a  
16 capital felony, the court shall conduct a separate sentencing  
17 proceeding to determine whether the defendant should be  
18 sentenced to death or life imprisonment as authorized by s.  
19 775.082. The proceeding shall be conducted by the trial judge  
20 before the trial jury as soon as practicable. If, through  
21 impossibility or inability, the trial jury is unable to  
22 reconvene for a hearing on the issue of penalty, having  
23 determined the guilt of the accused, the trial judge may  
24 summon a special juror or jurors as provided in chapter 913 to  
25 determine the issue of the imposition of the penalty. If the  
26 trial jury has been waived, or if the defendant pleaded  
27 guilty, the sentencing proceeding shall be conducted before a  
28 jury impaneled for that purpose, unless waived by the  
29 defendant. In the proceeding, evidence may be presented as to  
30 any matter that the court deems relevant to the nature of the  
31 crime and the character of the defendant and shall include

1 matters relating to any of the aggravating or mitigating  
2 circumstances enumerated in subsections (5) and (6). Any such  
3 evidence which the court deems to have probative value may be  
4 received, regardless of its admissibility under the  
5 exclusionary rules of evidence, provided the defendant is  
6 accorded a fair opportunity to rebut any hearsay statements.  
7 However, this subsection shall not be construed to authorize  
8 the 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 (2) ADVISORY SENTENCE BY THE JURY.--After hearing all  
14 the evidence, the jury shall deliberate and render an advisory  
15 sentence to the court, based upon the following matters:

16 (a) Whether sufficient aggravating circumstances exist  
17 as enumerated in subsection (5);

18 (b) Whether sufficient mitigating circumstances exist  
19 which outweigh the aggravating circumstances found to exist;  
20 and

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

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

30 (a) That sufficient aggravating circumstances exist as  
31 enumerated in subsection (5), and

1 (b) That there are insufficient mitigating  
2 circumstances to outweigh the aggravating circumstances.

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

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

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

26 (b) No criteria for review by the court regarding  
27 aggravating or mitigating circumstances shall be utilized  
28 except as authorized in this section. The court shall not  
29 engage in any form of proportionality review of a death  
30 sentence, including, but not limited to, review of a capital  
31 case based on comparable aggravating or mitigating

1 circumstances in other capital cases, based on comparable  
2 factors in the defendant's background in other capital cases,  
3 or based on the rate of imposition or execution of the death  
4 sentence in other capital cases.

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

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

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

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

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

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

28 (f) The capital felony was committed for pecuniary  
29 gain.

30  
31

1 (g) The capital felony was committed to disrupt or  
2 hinder the lawful exercise of any governmental function or the  
3 enforcement of laws.

4 (h) The capital felony was especially heinous,  
5 atrocious, or cruel.

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

9 (j) During the course of committing the capital  
10 felony, the defendant inflicted multiple physical injuries  
11 upon the victim.

12 (k) The defendant mutilated, dismembered, or sexually  
13 abused the victim's body, during or after commission of the  
14 capital felony.

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

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

23 ~~(n)(i)~~ The victim of the capital felony was a person  
24 less than 12 years of age.

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

29 (p) The victim had an injunction for protection in  
30 effect against the defendant when the capital felony was  
31 committed.

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

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

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

8           (a) The defendant has no significant history of prior  
9 criminal activity.

10           (b) The capital felony was committed while the  
11 defendant was under the influence of extreme mental or  
12 emotional disturbance.

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

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

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

20           (f) The capacity of the defendant to appreciate the  
21 criminality of his or her conduct or to conform his or her  
22 conduct to the requirements of law was substantially impaired.

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

24           (h) The existence of any other factors in the  
25 defendant's background that would mitigate against imposition  
26 of the death penalty.

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

31

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

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

14           Section 3. This act shall take effect upon becoming a  
15 law and shall apply to offenses committed on or after that  
16 date.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31