

Bill No. CS for SB 524

Amendment No. \_\_\_\_

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	
5	<hr/>		
6			
7			
8			
9			
10	<hr/>		
11	Senator Rossin moved the following amendment:		
12			
13	<b>Senate Amendment (with title amendment)</b>		
14	On page 15, line 14, delete that line		
15			
16	and insert:		
17	Section 1. <u>Sections 9 and 10 of this act may be cited</u>		
18	<u>as the "Jeff Mitchell Act."</u>		
19	Section 2. Subsections (4) and (5) of section 921.141,		
20	Florida Statutes, are amended to read:		
21	921.141 Sentence of death or life imprisonment for		
22	capital felonies; further proceedings to determine sentence.--		
23	(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon		
24	conviction or adjudication of guilt of a defendant of a		
25	capital felony, the court shall conduct a separate sentencing		
26	proceeding to determine whether the defendant should be		
27	sentenced to death or life imprisonment as authorized by s.		
28	775.082. The proceeding shall be conducted by the trial judge		
29	before the trial jury as soon as practicable. If, through		
30	impossibility or inability, the trial jury is unable to		
31	reconvene for a hearing on the issue of penalty, having		

Bill No. CS for SB 524

Amendment No. \_\_\_\_

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

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

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

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

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

Bill No. CS for SB 524

Amendment No. \_\_\_\_

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

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

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

12  
 13 In each case in which the court imposes the death sentence,  
 14 the determination of the court shall be supported by specific  
 15 written findings of fact based upon the circumstances in  
 16 subsections (5) and (6) and upon the records of the trial and  
 17 the sentencing proceedings. If the court does not make the  
 18 findings requiring the death sentence within 30 days after the  
 19 rendition of the judgment and sentence, the court shall impose  
 20 sentence of life imprisonment in accordance with s. 775.082.

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

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

Bill No. CS for SB 524

Amendment No. \_\_\_\_

1 accepted a plea offer from the state in exchange for trial  
2 testimony, or an agreement to testify, and was not sentenced  
3 to death.

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

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

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

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

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

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

Bill No. CS for SB 524

Amendment No. \_\_\_\_

1 piracy; or unlawful throwing, placing, or discharging of a  
2 destructive device or bomb.

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

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

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

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

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

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

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

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

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

30 (n)(l) The victim of the capital felony was a person  
31 less than 12 years of age.

Bill No. CS for SB 524

Amendment No. \_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

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

31           (h) The existence of any other factors in the

Bill No. CS for SB 524

Amendment No. \_\_\_\_

1 defendant's background that would mitigate against imposition  
2 of the death penalty.

3

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

7 (7) VICTIM IMPACT EVIDENCE.--Once the prosecution has  
8 provided evidence of the existence of one or more aggravating  
9 circumstances as described in subsection (5), the prosecution  
10 may introduce, and subsequently argue, victim impact evidence.  
11 Such evidence shall be designed to demonstrate the victim's  
12 uniqueness as an individual human being and the resultant loss  
13 to the community's members by the victim's death.

14 Characterizations and opinions about the crime, the defendant,  
15 and the appropriate sentence shall not be permitted as a part  
16 of victim impact evidence.

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

20 Section 3. If any provision of this act or the  
21 application thereof to any person or circumstance is held  
22 invalid, the invalidity shall not affect other provisions or  
23 applications of the act which can be given effect without the  
24 invalid provision or application, and to this end the  
25 provisions of this act are declared severable.

26 Section 4. This act shall take effect October 1 of the  
27 year in which enacted.

28

29

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

31 And the title is amended as follows:

Bill No. CS for SB 524

Amendment No. \_\_\_\_

1 Delete everything before the enacting clause

2

3 and insert:

4

A bill to be entitled

5

An act relating capital offenses; amending s.

6

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

7

murder in the first degree to include the act

8

of unlawfully killing a human being while

9

perpetrating, or attempting to perpetrate, the

10

murder of another human being; providing

11

penalties; providing that a person who

12

perpetrates or attempts to perpetrate a murder

13

commits felony murder in the second degree when

14

a person is killed by someone other than the

15

perpetrator; providing penalties; adding murder

16

to the list of felony offenses which do not

17

constitute third-degree felony murder;

18

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

19

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

20

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

21

F.S., relating to the termination of parental

22

rights, screening standards, violent offenses

23

against law enforcement officers and others,

24

the Criminal Punishment Code, blood testing,

25

and the Control Release Authority, to

26

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

27

references thereto; creating the "Jeff Mitchell

28

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

29

further proceedings to determine sentence of

30

death or life imprisonment for capital

31

felonies; providing that the judgment of



Bill No. CS for SB 524

Amendment No. \_\_\_\_

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