

By Senator Forman

32-539A-98

1 A bill to be entitled
 2 An act relating to the sentencing of capital
 3 felons; amending ss. 921.141, 921.142, F.S.;
 4 providing for a separate proceeding to
 5 determine whether a defendant accused of or
 6 convicted of a capital felony is mentally
 7 retarded; prescribing the penalty to be imposed
 8 if the defendant is determined to be mentally
 9 retarded; amending s. 924.07, F.S.; providing
 10 that the state may appeal a determination that
 11 a defendant is mentally retarded; providing an
 12 effective date.

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14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Subsection (1) of section 921.141, Florida
 17 Statutes, is amended to read:

18 921.141 Sentence of death or life imprisonment for
 19 capital felonies; further proceedings to determine sentence.--

20 (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--

21 (a) Upon conviction or adjudication of guilt of a
 22 defendant of a capital felony, or upon a pretrial motion by
 23 the defendant, the court shall conduct a separate ~~sentencing~~
 24 proceeding to determine whether the defendant should be
 25 sentenced to ~~death or~~ life imprisonment without consideration
 26 of a sentence of death due to the defendant's allegation that
 27 the defendant suffers from mental retardation, as defined in
 28 s. 916.106. If the court determines, by a preponderance of the
 29 evidence, that the defendant suffers from mental retardation,
 30 as defined in s. 916.106, the court shall sentence the
 31 defendant to life imprisonment. The determination shall be

1 made by the trial judge without the jury. The court shall
2 enter a written order that outlines its findings of fact and
3 conclusions of law to justify the determination of mental
4 retardation. A determination of mental retardation under this
5 paragraph is not an adjudication of incompetence or a
6 dismissal of any criminal charge or conviction.

7 (b) The state may appeal, pursuant to s. 924.07, a
8 determination of mental retardation made under paragraph (a).

9 (c) If a convicted capital felon waives the right to
10 proceed under paragraph (a) or if the court determines that a
11 convicted capital felon does not suffer from mental
12 retardation as provided in paragraph (a), the court shall
13 conduct a separate proceeding to determine whether the
14 convicted capital felon should be sentenced to death or life
15 imprisonment as authorized by s. 775.082. The proceeding shall
16 be conducted by the trial judge before the trial jury as soon
17 as practicable. If, through impossibility or inability, the
18 trial jury is unable to reconvene for a hearing on the issue
19 of penalty, having determined the guilt of the accused, the
20 trial judge may summon a special juror or jurors as provided
21 in chapter 913 to determine the issue of the imposition of the
22 penalty. If the trial jury has been waived, or if the
23 defendant pleaded guilty, the sentencing proceeding shall be
24 conducted before a jury impaneled for that purpose, unless
25 waived by the defendant. In the proceeding, evidence may be
26 presented as to any matter that the court deems relevant to
27 the nature of the crime and the character of the defendant and
28 shall include matters relating to any of the aggravating or
29 mitigating circumstances enumerated in subsections (5) and
30 (6). Any such evidence that ~~which~~ the court deems to have
31 probative value may be received, regardless of its

1 admissibility under the exclusionary rules of evidence,
2 provided the defendant is accorded a fair opportunity to rebut
3 any hearsay statements. However, this subsection does ~~shall~~
4 ~~not be construed to~~ authorize the introduction of any evidence
5 secured in violation of the Constitution of the United States
6 or the Constitution of the State of Florida. The state and
7 the defendant or the defendant's counsel shall be permitted to
8 present argument for or against sentence of death.

9 Section 2. Subsection (2) of section 921.142, Florida
10 Statutes, is amended to read:

11 921.142 Sentence of death or life imprisonment for
12 capital drug trafficking felonies; further proceedings to
13 determine sentence.--

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

15 (a) Upon conviction or adjudication of guilt of a
16 defendant of a capital felony under s. 893.135, or upon a
17 pretrial motion by the defendant, the court shall conduct a
18 separate ~~sentencing~~ proceeding to determine whether the
19 defendant should be sentenced to ~~death or~~ life imprisonment
20 without consideration of a sentence of death due to the
21 defendant's allegation that the defendant suffers from mental
22 retardation, as defined in s. 916.106. If the court
23 determines, by a preponderance of the evidence, that the
24 defendant suffers from mental retardation, as defined in s.
25 916.106, the court shall sentence the defendant to life
26 imprisonment. The determination shall be made by the trial
27 judge without the jury. The court shall enter a written order
28 that outlines its findings of fact and conclusions of law to
29 justify the determination of mental retardation. A
30 determination of mental retardation under this paragraph is
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1 not an adjudication of incompetence or a dismissal of any
2 criminal charge or conviction.

3 (b) The state may appeal, pursuant to s. 924.07, a
4 determination of mental retardation made under paragraph (a).

5 (c) If a convicted capital felon waives the right to
6 proceed under paragraph (a) or if the court determines that a
7 convicted capital felon does not suffer from mental
8 retardation as provided in paragraph (a), the court shall
9 conduct a separate proceeding to determine whether the
10 convicted capital felon should be sentenced to death or life
11 imprisonment as authorized by s. 775.082. The proceeding
12 shall be conducted by the trial judge before the trial jury as
13 soon as practicable. If, through impossibility or inability,
14 the trial jury is unable to reconvene for a hearing on the
15 issue of penalty, having determined the guilt of the accused,
16 the trial judge may summon a special juror or jurors as
17 provided in chapter 913 to determine the issue of the
18 imposition of the penalty. If the trial jury has been waived,
19 or if the defendant pleaded guilty, the sentencing proceeding
20 shall be conducted before a jury impaneled for that purpose,
21 unless waived by the defendant. In the proceeding, evidence
22 may be presented as to any matter that the court deems
23 relevant to the nature of the crime and the character of the
24 defendant and shall include matters relating to any of the
25 aggravating or mitigating circumstances enumerated in
26 subsections (6) and (7). Any such evidence that ~~which~~ the
27 court deems to have probative value may be received,
28 regardless of its admissibility under the exclusionary rules
29 of evidence, provided the defendant is accorded a fair
30 opportunity to rebut any hearsay statements. However, this
31 subsection does ~~shall not be construed to~~ authorize the

1 introduction of any evidence secured in violation of the
2 Constitution of the United States or the Constitution of the
3 State of Florida. The state and the defendant or the
4 defendant's counsel shall be permitted to present argument for
5 or against sentence of death.

6 Section 3. Paragraph (m) is added to subsection (1) of
7 section 924.07, Florida Statutes, to read:

8 924.07 Appeal by state.--

9 (1) The state may appeal from:

10 (m) An order pursuant to s. 921.141(1)(a) or s.
11 921.142(2)(a) declaring a defendant mentally retarded.

12 Section 4. This act shall take effect July 1, 1998.

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15 SENATE SUMMARY

16 Provides that the court conduct a separate proceeding
17 without a jury to determine whether a defendant is
18 mentally retarded if the defendant is accused of or
19 convicted of a capital felony. Provides that the
20 defendant be sentenced to life imprisonment if the court
21 determines that the defendant is mentally retarded.
22 Provides that the state may appeal a determination that a
23 defendant accused of or convicted of a capital felony is
24 mentally retarded.
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