

By the Committee on Criminal Justice and Senator Forman

307-1845-98

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 a
 12 definition of mental retardation; providing an
 13 effective date.

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

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

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

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

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

1 shall be made by the trial judge without the jury. The court
2 shall enter a written order that outlines its findings of fact
3 and 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. If the court determines, by a preponderance of
23 the evidence, that the defendant suffers from mental
24 retardation, the court shall sentence the defendant to life
25 imprisonment. The determination shall be made by the trial
26 judge without the jury. The court shall enter a written order
27 that outlines its findings of fact and conclusions of law to
28 justify the determination of mental retardation. A
29 determination of mental retardation under this paragraph is
30 not an adjudication of incompetence or a dismissal of any
31 criminal charge or conviction.

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

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

1 State of Florida. The state and the defendant or the
2 defendant's counsel shall be permitted to present argument for
3 or against sentence of death.

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

6 924.07 Appeal by state.--

7 (1) The state may appeal from:

8 (m) An order pursuant to s. 921.141(1)(a) or s.
9 921.142(2)(a) declaring a defendant mentally retarded.

10 Section 4. For purposes of sections 921.141 and
11 921.142, Florida Statutes, the term "mental retardation" means
12 significantly subaverage general intellectual functioning
13 existing concurrently with deficits in adaptive behavior and
14 manifested during the period from conception to age 18. The
15 term "significantly subaverage general intellectual
16 functioning," for the purpose of this definition, means an
17 intelligence quotient of 55 or less on a standardized
18 intelligence test specified in the rules of the Department of
19 Children and Family Services. The term "adaptive behavior,"
20 for the purpose of this definition, means the effectiveness or
21 degree with which an individual meets the standards of
22 personal independence and social responsibility expected of
23 the individual's age, cultural group, and community.

24 Section 5. This act shall take effect July 1, 1998.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 914

- . Provides mental retardation definition specifically for ss. 921.141 and 921.142.
- . Provides that "significantly subaverage general intellectual functioning" for purposes of the definition means an intelligence quotient of 55 or less on a standardized intelligence test.
- . Deletes references to the chapter 916 mental retardation definition.