

Bill No. HB 1439

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Forman moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 1, line 19, through		
15	page 2, line 17, delete those lines		
16			
17	and insert:		
18	(1)(a) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon		
19	conviction or adjudication of guilt of a defendant of a		
20	capital felony, the court shall conduct a separate sentencing		
21	proceeding to determine whether the defendant should be		
22	sentenced to death or life imprisonment as authorized by s.		
23	775.082. The proceeding shall be conducted by the trial judge		
24	before the trial jury as soon as practicable. If, through		
25	impossibility or inability, the trial jury is unable to		
26	reconvene for a hearing on the issue of penalty, having		
27	determined the guilt of the accused, the trial judge may		
28	summon a special juror or jurors as provided in chapter 913 to		
29	determine the issue of the imposition of the penalty. If the		
30	trial jury has been waived, or if the defendant pleaded		
31	guilty, the sentencing proceeding shall be conducted before a		

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1 jury impaneled for that purpose, unless waived by the
2 defendant. In the proceeding, evidence may be presented as to
3 any matter that the court deems relevant to the nature of the
4 crime and the character of the defendant and shall include
5 matters relating to any of the aggravating or mitigating
6 circumstances enumerated in subsections (5) and (6). Any such
7 evidence which the court deems to have probative value may be
8 received, regardless of its admissibility under the
9 exclusionary rules of evidence, provided the defendant is
10 accorded a fair opportunity to rebut any hearsay statements.
11 However, this subsection shall not be construed to authorize
12 the introduction of any evidence secured in violation of the
13 Constitution of the United States or the Constitution of the
14 State of Florida. The state and the defendant or the
15 defendant's counsel shall be permitted to present argument for
16 or against sentence of death.

17 (b) If the court determines by clear and convincing
18 evidence, that the defendant suffers from mental retardation,
19 the court shall sentence the defendant to life imprisonment.
20 The defendant shall bear the burden of persuasion to
21 demonstrate that he or she is mentally retarded. The failure
22 of the defendant to raise the claim that he or she is mentally
23 retarded at the sentencing phase shall waive any such claim.
24 No postconviction claim may be based on the assertion that a
25 defendant could have or should have been sentenced to life
26 imprisonment based on the defendant's alleged mental
27 retardation. This claim may only be raised in capital criminal
28 prosecutions occurring after the effective date of this act
29 and may not be raised in any postconviction proceeding. This
30 claim may not be raised in the guilt phase of a capital
31 criminal proceeding.

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

2 And the title is amended as follows:

3 On page 1, line 10, after the semicolon

4

5 insert:

6 providing a sentence of life imprisonment for
7 the mentally retarded;

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