

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 6, between lines 25 and 26,		
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16	insert:		
17	Section 2. Subsection (2) of section 921.142, Florida		
18	Statutes, is amended to read:		
19	921.142 Sentence of death or life imprisonment for		
20	capital drug trafficking felonies; further proceedings to		
21	determine sentence.--		
22	(2)(a) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon		
23	conviction or adjudication of guilt of a defendant of a		
24	capital felony under s. 893.135, the court shall conduct a		
25	separate sentencing proceeding to determine whether the		
26	defendant should be sentenced to death or life imprisonment as		
27	authorized by s. 775.082. The proceeding shall be conducted		
28	by the trial judge before the trial jury as soon as		
29	practicable. If, through impossibility or inability, the		
30	trial jury is unable to reconvene for a hearing on the issue		
31	of penalty, having determined the guilt of the accused, the		

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

21 (b) If the court determines by clear and convincing
22 evidence, that the defendant suffers from mental retardation,
23 the court shall sentence the defendant to life imprisonment.
24 The defendant shall bear the burden of persuasion to
25 demonstrate that he or she is mentally retarded. The failure
26 of the defendant to raise the claim that he or she is mentally
27 retarded at the sentencing phase shall waive any such claim.
28 No postconviction claim may be based on the assertion that a
29 defendant could have or should have been sentenced to life
30 imprisonment based on the defendant's alleged mental
31 retardation. This claim may only be raised in capital criminal

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1 prosecutions occurring after the effective date of this act
2 and may not be raised in any postconviction proceeding. This
3 claim may not be raised in the guilt phase of a capital
4 criminal proceeding.

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6 (Redesignate subsequent sections.)

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8
9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 1, line 10, after the semicolon

12
13 insert:

14 amending s. 921.142, F.S.; providing for a
15 sentence of life imprisonment for the mentally
16 retarded;

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