

By Representative Pruitt

1 A bill to be entitled
2 An act relating to capital felony sentencing;
3 amending s. 921.141, F.S.; providing as an
4 additional aggravating circumstance for
5 purposes of sentencing that the capital felony
6 was committed while the defendant was violating
7 an injunction for protection against domestic
8 violence or repeat violence, a foreign
9 protection order, or any other court-imposed
10 prohibition of conduct toward the victim;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 921.141, Florida Statutes, is
16 amended to read:
17 921.141 Sentence of death or life imprisonment for
18 capital felonies; further proceedings to determine sentence.--
19 (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon
20 conviction or adjudication of guilt of a defendant of a
21 capital felony, the court shall conduct a separate sentencing
22 proceeding to determine whether the defendant should be
23 sentenced to death or life imprisonment as authorized by s.
24 775.082. The proceeding shall be conducted by the trial judge
25 before the trial jury as soon as practicable. If, through
26 impossibility or inability, the trial jury is unable to
27 reconvene for a hearing on the issue of penalty, having
28 determined the guilt of the accused, the trial judge may
29 summon a special juror or jurors as provided in chapter 913 to
30 determine the issue of the imposition of the penalty. If the
31 trial jury has been waived, or if the defendant pleaded

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

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

21 (a) Whether sufficient aggravating circumstances exist
22 as enumerated in subsection (5);

23 (b) Whether sufficient mitigating circumstances exist
24 which outweigh the aggravating circumstances found to exist;
25 and

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

28 (3) FINDINGS IN SUPPORT OF SENTENCE OF
29 DEATH.--Notwithstanding the recommendation of a majority of
30 the jury, the court, after weighing the aggravating and
31 mitigating circumstances, shall enter a sentence of life

1 imprisonment or death, but if the court imposes a sentence of
2 death, it shall set forth in writing its findings upon which
3 the sentence of death is based as to the facts:

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

6 (b) That there are insufficient mitigating
7 circumstances to outweigh the aggravating circumstances.

8
9 In each case in which the court imposes the death sentence,
10 the determination of the court shall be supported by specific
11 written findings of fact based upon the circumstances in
12 subsections (5) and (6) and upon the records of the trial and
13 the sentencing proceedings. If the court does not make the
14 findings requiring the death sentence within 30 days after the
15 rendition of the judgment and sentence, the court shall impose
16 sentence of life imprisonment in accordance with s. 775.082.

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

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

26 (a) The capital felony was committed by a person
27 previously convicted of a felony and under sentence of
28 imprisonment or placed on community control or on felony
29 probation.

30
31

1 (b) The defendant was previously convicted of another
2 capital felony or of a felony involving the use or threat of
3 violence to the person.

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

6 (d) The capital felony was committed while the
7 defendant was engaged, or was an accomplice, in the commission
8 of, or an attempt to commit, or flight after committing or
9 attempting to commit, any: robbery; sexual battery; aggravated
10 child abuse; abuse of an elderly person or disabled adult
11 resulting in great bodily harm, permanent disability, or
12 permanent disfigurement; arson; burglary; kidnapping; aircraft
13 piracy; or unlawful throwing, placing, or discharging of a
14 destructive device or bomb.

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

18 (f) The capital felony was committed for pecuniary
19 gain.

20 (g) The capital felony was committed to disrupt or
21 hinder the lawful exercise of any governmental function or the
22 enforcement of laws.

23 (h) The capital felony was especially heinous,
24 atrocious, or cruel.

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

28 (j) The victim of the capital felony was a law
29 enforcement officer engaged in the performance of his or her
30 official duties.

31

1 (k) The victim of the capital felony was an elected or
2 appointed public official engaged in the performance of his or
3 her official duties if the motive for the capital felony was
4 related, in whole or in part, to the victim's official
5 capacity.

6 (l) The victim of the capital felony was a person less
7 than 12 years of age.

8 (m) The victim of the capital felony was particularly
9 vulnerable due to advanced age or disability, or because the
10 defendant stood in a position of familial or custodial
11 authority over the victim.

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

14 (o) The capital felony was committed while the
15 defendant was engaged in willfully violating an injunction for
16 protection against domestic violence issued pursuant to s.
17 741.30, a foreign protection order accorded full faith and
18 credit pursuant to s. 741.315, an injunction for protection
19 against repeat violence pursuant to s. 784.046, or after any
20 other court-imposed prohibition of conduct toward the victim.

21 (6) MITIGATING CIRCUMSTANCES.--Mitigating
22 circumstances shall be the following:

23 (a) The defendant has no significant history of prior
24 criminal activity.

25 (b) The capital felony was committed while the
26 defendant was under the influence of extreme mental or
27 emotional disturbance.

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

30
31

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

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

6 (f) The capacity of the defendant to appreciate the
7 criminality of his or her conduct or to conform his or her
8 conduct to the requirements of law was substantially impaired.

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

10 (h) The existence of any other factors in the
11 defendant's background that would mitigate against imposition
12 of the death penalty.

13 (7) VICTIM IMPACT EVIDENCE.--Once the prosecution has
14 provided evidence of the existence of one or more aggravating
15 circumstances as described in subsection (5), the prosecution
16 may introduce, and subsequently argue, victim impact evidence.
17 Such evidence shall be designed to demonstrate the victim's
18 uniqueness as an individual human being and the resultant loss
19 to the community's members by the victim's death.
20 Characterizations and opinions about the crime, the defendant,
21 and the appropriate sentence shall not be permitted as a part
22 of victim impact evidence.

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

26 Section 2. This act shall take effect July 1, 1999.

27
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

HOUSE SUMMARY

Provides as an additional aggravating circumstance for purposes of sentencing that the capital felony was committed while the defendant was violating an injunction for protection against domestic violence or repeat violence, a foreign protection order, or any other court-imposed prohibition of conduct toward the victim.