

Bill No. CS for SB 1496

Amendment No.     

|    | <u>Senate</u>  | CHAMBER ACTION | <u>House</u> |
|----|--|----------------|--------------|
| 1  |  | .              |              |
| 2  |  | .              |              |
| 3  |  | .              |              |
| 4  |  | .              |              |
| 5  | <hr/>  |                |              |
| 6  |  |                |              |
| 7  |  |                |              |
| 8  |  |                |              |
| 9  |  |                |              |
| 10 | <hr/>  |                |              |
| 11 | Senator Saunders moved the following amendment:                |                |              |
| 12 |  |                |              |
| 13 | <b>Senate Amendment (with title amendment)</b>                 |                |              |
| 14 | On page 5, between lines 24 and 25,                            |                |              |
| 15 |  |                |              |
| 16 | insert:  |                |              |
| 17 | Section 5. Section 921.141, Florida Statutes, is               |                |              |
| 18 | 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.--Upon            |                |              |
| 22 | conviction or adjudication of guilt of a defendant of a        |                |              |
| 23 | capital felony, the court shall conduct a separate sentencing  |                |              |
| 24 | proceeding to determine whether the defendant should be        |                |              |
| 25 | sentenced to death or life imprisonment as authorized by s.    |                |              |
| 26 | 775.082. The proceeding shall be conducted by the trial judge  |                |              |
| 27 | before the trial jury as soon as practicable. If, through      |                |              |
| 28 | impossibility or inability, the trial jury is unable to        |                |              |
| 29 | reconvene for a hearing on the issue of penalty, having        |                |              |
| 30 | determined the guilt of the accused, the trial judge may       |                |              |
| 31 | summon a special juror or jurors as provided in chapter 913 to |                |              |

Bill No. CS for SB 1496

Amendment No. \_\_\_\_

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

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

23 (a) Whether sufficient aggravating circumstances exist  
24 as enumerated in subsection (5);

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

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

30 (3) FINDINGS IN SUPPORT OF SENTENCE OF  
31 DEATH.--Notwithstanding the recommendation of a majority of

Bill No. CS for SB 1496

Amendment No. \_\_\_\_

1 the jury, the court, after weighing the aggravating and  
2 mitigating circumstances, shall enter a sentence of life  
3 imprisonment or death, but if the court imposes a sentence of  
4 death, it shall set forth in writing its findings upon which  
5 the sentence of death is based as to the facts:

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

8 (b) That there are insufficient mitigating  
9 circumstances to outweigh the aggravating circumstances.

10

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

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

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

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

Bill No. CS for SB 1496

Amendment No. \_\_\_\_

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           (k) The victim of the capital felony was an elected or

Bill No. CS for SB 1496

Amendment No. \_\_\_\_

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

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

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

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

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

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

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

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

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

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

Bill No. CS for SB 1496

Amendment No. \_\_\_\_

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

3           (f) The capacity of the defendant to appreciate the  
4 criminality of his or her conduct or to conform his or her  
5 conduct to the requirements of law was substantially impaired.

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

7           (h) The existence of any other factors in the  
8 defendant's background that would mitigate against imposition  
9 of the death penalty.

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

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

23  
24 (Redesignate subsequent sections.)

25  
26  
27 ===== T I T L E   A M E N D M E N T =====

28 And the title is amended as follows:

29           On page 1, line 28, after the semicolon

30  
31 insert:

Bill No. CS for SB 1496

Amendment No. \_\_\_\_

1           amending s. 921.141, F.S.; providing as an  
2           additional aggravating circumstance for  
3           purposes of sentencing that the capital felony  
4           was committed while the defendant was violating  
5           an injunction for protection against domestic  
6           violence or repeat violence, a foreign  
7           protection order, or any other court-imposed  
8           prohibition of conduct toward the victim;  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31