

1                                   A bill to be entitled  
2           An act relating to sentencing; amending s.  
3           775.021, F.S., relating to rules of  
4           construction; removing exceptions to a  
5           construction rule regarding sentencing for  
6           criminal offenses; amending s. 874.04, F.S.;  
7           providing for enhanced penalties for commission  
8           of a felony or misdemeanor, or a delinquent act  
9           or violation of law that would be a felony or  
10          misdemeanor if committed by an adult, under  
11          specified circumstances when the defendant  
12          committed the charged offense for the purpose  
13          of furthering, benefiting, or promoting a  
14          criminal street gang; amending s. 921.0022,  
15          F.S., relating to the offense severity ranking  
16          chart of the Criminal Punishment Code; ranking  
17          the offense of knowingly transmitting or  
18          disseminating by computer any notice or  
19          advertisement for the purpose of facilitating,  
20          encouraging, offering, or soliciting sexual  
21          conduct of or with a minor, or visually  
22          depicting such conduct; amending s. 921.0024,  
23          F.S., relating to the Criminal Punishment Code  
24          worksheet computations and scoresheets;  
25          revising guidelines for application of a  
26          specified sentence multiplier for offenses  
27          related to criminal street gangs; conforming  
28          terminology; amending s. 921.141, F.S.;  
29          providing as an additional aggravating  
30          circumstance for purposes of sentencing that  
31          the capital felony was committed while the

1           defendant was violating an injunction for  
2           protection against domestic violence or repeat  
3           violence, a foreign protection order, or any  
4           other court-imposed prohibition of conduct  
5           toward the victim; providing an effective date.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
8

9           Section 1. Subsection (4) of section 775.021, Florida  
10 Statutes, is amended to read:

11           775.021 Rules of construction.--

12           (4)(a) Whoever, in the course of one criminal  
13 transaction or episode, commits an act or acts which  
14 constitute one or more separate criminal offenses, upon  
15 conviction and adjudication of guilt, shall be sentenced  
16 separately for each criminal offense; and the sentencing judge  
17 may order the sentences to be served concurrently or  
18 consecutively. For the purposes of this subsection, offenses  
19 are separate if each offense requires proof of an element that  
20 the other does not, without regard to the accusatory pleading  
21 or the proof adduced at trial.

22           (b) The intent of the Legislature is to convict and  
23 sentence for each criminal offense committed in the course of  
24 one criminal episode or transaction and not to allow the  
25 principle of lenity as set forth in subsection (1) to  
26 determine legislative intent. ~~Exceptions to this rule of~~  
27 ~~construction are:~~

28           1. ~~Offenses which require identical elements of proof.~~

29           2. ~~Offenses which are degrees of the same offense as~~  
30 ~~provided by statute.~~

31

1           ~~3. Offenses which are lesser offenses the statutory~~  
2 ~~elements of which are subsumed by the greater offense.~~

3           Section 2. Section 874.04, Florida Statutes, is  
4 amended to read:

5           874.04 Criminal street gang activity; enhanced  
6 penalties.--Upon a finding by the court at sentencing that the  
7 defendant committed the charged offense for the purpose of  
8 furthering, benefiting, or promoting a criminal street gang ~~is~~  
9 ~~a member of a criminal street gang~~, the penalty for any felony  
10 or misdemeanor, or any delinquent act or violation of law  
11 which would be a felony or misdemeanor if committed by an  
12 adult, may be enhanced ~~if the offender was a member of a~~  
13 ~~criminal street gang at the time of the commission of such~~  
14 ~~offense~~. Each of the findings required as a basis for such  
15 sentence shall be found by a preponderance of the evidence.  
16 The enhancement will be as follows:

17           (1)(a) A misdemeanor of the second degree may be  
18 punished as if it were a misdemeanor of the first degree.

19           (b) A misdemeanor of the first degree may be punished  
20 as if it were a felony of the third degree. For purposes of  
21 sentencing under chapter 921 and determining incentive  
22 gain-time eligibility under chapter 944, such offense is  
23 ranked in level 1 of the offense severity ranking chart. The  
24 criminal street gang multiplier in s. 921.0024 does not apply  
25 to misdemeanors enhanced under this paragraph.

26           (2)(a) A felony of the third degree may be punished as  
27 if it were a felony of the second degree.

28           (b) A felony of the second degree may be punished as  
29 if it were a felony of the first degree.

30           (c) A felony of the first degree may be punished as if  
31 it were a life felony.

1  
 2 For purposes of sentencing under chapter 921 and determining  
 3 incentive gain-time eligibility under chapter 944, such felony  
 4 offense is ranked as provided in s. 921.0022 or s. 921.0023,  
 5 and without regard to the penalty enhancement in this  
 6 subsection. For purposes of this section, penalty enhancement  
 7 affects the applicable statutory maximum penalty only.

8 Section 3. Paragraph (f) of subsection (3) of section  
 9 921.0022, Florida Statutes, 1998 Supplement, is amended to  
 10 read:

11 921.0022 Criminal Punishment Code; offense severity  
 12 ranking chart.--

13 (3) OFFENSE SEVERITY RANKING CHART

14	15 Florida	16 Statute	17 Felony	18 Degree	19 Description
20		316.027(1)(b)	2nd		(f) LEVEL 6 Accident involving death, failure to stop; leaving scene.
21		316.193(2)(b)	3rd		Felony DUI, 4th or subsequent conviction.
22		775.0875(1)	3rd		Taking firearm from law enforcement officer.
23		775.21(9)	3rd		Sexual predators; failure to register; failure to renew driver's license or identification card.
24		784.021(1)(a)	3rd		Aggravated assault; deadly weapon without intent to kill.
25					
26					
27					
28					
29					
30					
31					

1	784.021(1)(b)	3rd	Aggravated assault; intent to
2			commit felony.
3	784.041	3rd	Felony battery.
4	784.048(3)	3rd	Aggravated stalking; credible
5			threat.
6	784.048(5)	3rd	Aggravated stalking of person
7			under 16.
8	784.07(2)(c)	2nd	Aggravated assault on law
9			enforcement officer.
10	784.08(2)(b)	2nd	Aggravated assault on a person 65
11			years of age or older.
12	784.081(2)	2nd	Aggravated assault on specified
13			official or employee.
14	784.082(2)	2nd	Aggravated assault by detained
15			person on visitor or other
16			detainee.
17	784.083(2)	2nd	Aggravated assault on code
18			inspector.
19	787.02(2)	3rd	False imprisonment; restraining
20			with purpose other than those in
21			s. 787.01.
22	790.115(2)(d)	2nd	Discharging firearm or weapon on
23			school property.
24	790.161(2)	2nd	Make, possess, or throw
25			destructive device with intent to
26			do bodily harm or damage
27			property.
28	790.164(1)	2nd	False report of deadly explosive
29			or act of arson or violence to
30			state property.
31			

1	790.19	2nd	Shooting or throwing deadly
2			missiles into dwellings, vessels,
3			or vehicles.
4	794.011(8)(a)	3rd	Solicitation of minor to
5			participate in sexual activity by
6			custodial adult.
7	794.05(1)	2nd	Unlawful sexual activity with
8			specified minor.
9	806.031(2)	2nd	Arson resulting in great bodily
10			harm to firefighter or any other
11			person.
12	810.02(3)(c)	2nd	Burglary of occupied structure;
13			unarmed; no assault or battery.
14	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
15			but less than \$100,000, grand
16			theft in 2nd degree.
17	812.13(2)(c)	2nd	Robbery, no firearm or other
18			weapon (strong-arm robbery).
19	817.034(4)(a)1.	1st	Communications fraud, value
20			greater than \$50,000.
21	817.4821(5)	2nd	Possess cloning paraphernalia
22			with intent to create cloned
23			cellular telephones.
24	825.102(1)	3rd	Abuse of an elderly person or
25			disabled adult.
26	825.102(3)(c)	3rd	Neglect of an elderly person or
27			disabled adult.
28	825.1025(3)	3rd	Lewd or lascivious molestation of
29			an elderly person or disabled
30			adult.
31			

1	825.103(2)(c)	3rd	Exploiting an elderly person or
2			disabled adult and property is
3			valued at less than \$20,000.
4	827.03(1)	3rd	Abuse of a child.
5	827.03(3)(c)	3rd	Neglect of a child.
6	827.071(2)&(3)	2nd	Use or induce a child in a sexual
7			performance, or promote or direct
8			such performance.
9	836.05	2nd	Threats; extortion.
10	836.10	2nd	Written threats to kill or do
11			bodily injury.
12	843.12	3rd	Aids or assists person to escape.
13	<u>847.0135(2)</u>	<u>3rd</u>	<u>Use of computer to facilitate or</u>
14			<u>solicit sexual conduct of or with</u>
15			<u>a minor.</u>
16	847.0135(3)	3rd	Solicitation of a child, via a
17			computer service, to commit an
18			unlawful sex act.
19	914.23	2nd	Retaliation against a witness,
20			victim, or informant, with bodily
21			injury.
22	943.0435(6)	3rd	Sex offenders; failure to comply
23			with reporting requirements.
24	944.35(3)(a)2.	3rd	Committing malicious battery upon
25			or inflicting cruel or inhuman
26			treatment on an inmate or
27			offender on community
28			supervision, resulting in great
29			bodily harm.
30	944.40	2nd	Escapes.
31			

- 1 944.46 3rd Harboring, concealing, aiding
- 2 escaped prisoners.
- 3 944.47(1)(a)5. 2nd Introduction of contraband
- 4 (firearm, weapon, or explosive)
- 5 into correctional facility.
- 6 951.22(1) 3rd Intoxicating drug, firearm, or
- 7 weapon introduced into county
- 8 facility.

9 Section 4. Subsection (1) of section 921.0024, Florida  
 10 Statutes, 1998 Supplement, is amended to read:

11 921.0024 Criminal Punishment Code; worksheet  
 12 computations; scoresheets.--

13 (1)(a) The Criminal Punishment Code worksheet is used  
 14 to compute the subtotal and total sentence points as follows:

15  
 16 FLORIDA CRIMINAL PUNISHMENT CODE  
 17 WORKSHEET

18  
 19 OFFENSE SCORE

20  
 21 Primary Offense

22 Level	Sentence Points		Total
23 .....			
24 10	116	=	....
25 9	92	=	....
26 8	74	=	....
27 7	56	=	....
28 6	36	=	....
29 5	28	=	....
30 4	22	=	....
31 3	16	=	....



1	2	10	=	....
2	1	4	=	....
3				
4	.....			
5				<u>Total</u>

Additional Offenses						
Level	Sentence Points		Counts		Total	
10	10	58	x	....	=	....
11	9	46	x	....	=	....
12	8	37	x	....	=	....
13	7	28	x	....	=	....
14	6	18	x	....	=	....
15	5	5.4	x	....	=	....
16	4	3.6	x	....	=	....
17	3	2.4	x	....	=	....
18	2	1.2	x	....	=	....
19	1	0.7	x	....	=	....
20	M	0.2	x	....	=	....
21						
22	.....					
23						<u>Total</u>

Victim Injury						
Level	Sentence Points		Number		Total	
28	2nd degree					
29	murder-					
30	death	240	x	....	=	....
31	Death	120	x	....	=	....

1	Severe	40	x	....	=	....
2	Moderate	18	x	....	=	....
3	Slight	4	x	....	=	....
4	Sexual					
5	penetration	80	x	....	=	....
6	Sexual					
7	contact	40	x	....	=	....
8						
9	.....					
10						<u>Total</u>
11						
12	Primary Offense + Additional Offenses + Victim Injury =					
13	TOTAL OFFENSE SCORE					
14						
15	PRIOR RECORD SCORE					
16						
17	Prior Record					
18	Level	Sentence Points		Number		Total
19	.....					
20	10	29	x	....	=	....
21	9	23	x	....	=	....
22	8	19	x	....	=	....
23	7	14	x	....	=	....
24	6	9	x	....	=	....
25	5	3.6	x	....	=	....
26	4	2.4	x	....	=	....
27	3	1.6	x	....	=	....
28	2	0.8	x	....	=	....
29	1	0.5	x	....	=	....
30	M	0.2	x	....	=	....
31						

1  
2 .....  
3 Total  
4  
5 TOTAL OFFENSE SCORE.....  
6 TOTAL PRIOR RECORD SCORE.....  
7  
8 LEGAL STATUS.....  
9 COMMUNITY SANCTION VIOLATION.....  
10 PRIOR SERIOUS FELONY.....  
11 PRIOR CAPITAL FELONY.....  
12 FIREARM OR SEMIAUTOMATIC WEAPON.....  
13 SUBTOTAL.....  
14  
15 PRISON RELEASEE REOFFENDER (no)(yes).....  
16 VIOLENT CAREER CRIMINAL (no)(yes).....  
17 HABITUAL VIOLENT OFFENDER (no)(yes).....  
18 HABITUAL OFFENDER (no)(yes).....  
19 DRUG TRAFFICKER (no)(yes) (x multiplier).....  
20 LAW ENF. PROTECT. (no)(yes) (x multiplier).....  
21 MOTOR VEHICLE THEFT (no)(yes) (x multiplier).....  
22 CRIMINAL STREET GANG OFFENSE MEMBER (no)(yes) (x  
23 multiplier).....  
24 DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD  
25 (no)(yes) (x multiplier).....  
26 .....  
27 TOTAL SENTENCE POINTS.....

(b) WORKSHEET KEY:

1 Legal status points are assessed when any form of legal status  
2 existed at the time the offender committed an offense before  
3 the court for sentencing. Four (4) sentence points are  
4 assessed for an offender's legal status.

5  
6 Community sanction violation points are assessed when a  
7 community sanction violation is before the court for  
8 sentencing. Six (6) sentence points are assessed for each  
9 community sanction violation, and each successive community  
10 sanction violation; however, if the community sanction  
11 violation includes a new felony conviction before the  
12 sentencing court, twelve (12) community sanction violation  
13 points are assessed for such violation, and for each  
14 successive community sanction violation involving a new felony  
15 conviction. Multiple counts of community sanction violations  
16 before the sentencing court shall not be a basis for  
17 multiplying the assessment of community sanction violation  
18 points.

19  
20 Prior serious felony points: If the offender has a primary  
21 offense or any additional offense ranked in level 8, level 9,  
22 or level 10, and one or more prior serious felonies, a single  
23 assessment of 30 points shall be added. For purposes of this  
24 section, a prior serious felony is an offense in the  
25 offender's prior record that is ranked in level 8, level 9, or  
26 level 10 under s. 921.0022 or s. 921.0023 and for which the  
27 offender is serving a sentence of confinement, supervision, or  
28 other sanction or for which the offender's date of release  
29 from confinement, supervision, or other sanction, whichever is  
30 later, is within 3 years before the date the primary offense  
31 or any additional offense was committed.

1  
2 Prior capital felony points: If the offender has one or more  
3 prior capital felonies in the offender's criminal record,  
4 points shall be added to the subtotal sentence points of the  
5 offender equal to twice the number of points the offender  
6 receives for the primary offense and any additional offense.  
7 A prior capital felony in the offender's criminal record is a  
8 previous capital felony offense for which the offender has  
9 entered a plea of nolo contendere or guilty or has been found  
10 guilty; or a felony in another jurisdiction which is a capital  
11 felony in that jurisdiction, or would be a capital felony if  
12 the offense were committed in this state.

13  
14 Possession of a firearm, semiautomatic firearm, or machine  
15 gun: If the offender is convicted of committing or attempting  
16 to commit any felony other than those enumerated in s.  
17 775.087(2) while having in his possession: a firearm as  
18 defined in s. 790.001(6), an additional 18 sentence points are  
19 assessed; or if the offender is convicted of committing or  
20 attempting to commit any felony other than those enumerated in  
21 s. 775.087(3) while having in his possession a semiautomatic  
22 firearm as defined in s. 775.087(3) or a machine gun as  
23 defined in s. 790.001(9), an additional 25 sentence points are  
24 assessed.

25  
26 Sentencing multipliers:

27  
28 Drug trafficking: If the primary offense is drug trafficking  
29 under s. 893.135, the subtotal sentence points are multiplied,  
30 at the discretion of the court, for a level 7 or level 8  
31 offense, by 1.5. The state attorney may move the sentencing

1 court to reduce or suspend the sentence of a person convicted  
2 of a level 7 or level 8 offense, if the offender provides  
3 substantial assistance as described in s. 893.135(4).

4  
5 Law enforcement protection: If the primary offense is a  
6 violation of the Law Enforcement Protection Act under s.  
7 775.0823(2), the subtotal sentence points are multiplied by  
8 2.5. If the primary offense is a violation of s. 775.0823(3),  
9 (4), (5), (6), (7), or (8), the subtotal sentence points are  
10 multiplied by 2.0. If the primary offense is a violation of s.  
11 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
12 Protection Act under s. 775.0823(9) or (10), the subtotal  
13 sentence points are multiplied by 1.5.

14  
15 Grand theft of a motor vehicle: If the primary offense is  
16 grand theft of the third degree involving a motor vehicle and  
17 in the offender's prior record, there are three or more grand  
18 thefts of the third degree involving a motor vehicle, the  
19 subtotal sentence points are multiplied by 1.5.

20  
21 Offense related to criminal street gang member: If the  
22 offender is convicted of the primary offense and committed  
23 that offense for the purpose of furthering, benefiting, or  
24 promoting a criminal street gang ~~is found to have been a~~  
25 ~~member of a criminal street gang at the time of the commission~~  
26 ~~of the primary offense~~ pursuant to s. 874.04, the subtotal  
27 sentence points shall be ~~are~~ multiplied by 1.5.

28  
29 Domestic violence in the presence of a child: If the offender  
30 is convicted of the primary offense and the primary offense is  
31 a crime of domestic violence, as defined in s. 741.28, which

1 was committed in the presence of a child under 16 years of age  
2 who is a family household member as defined in s. 741.28(2)  
3 with the victim or perpetrator, the subtotal sentence points  
4 are multiplied, at the discretion of the court, by 1.5.

5 Section 5. Section 921.141, Florida Statutes, is  
6 amended to read:

7 921.141 Sentence of death or life imprisonment for  
8 capital felonies; further proceedings to determine sentence.--

9 (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon  
10 conviction or adjudication of guilt of a defendant of a  
11 capital felony, the court shall conduct a separate sentencing  
12 proceeding to determine whether the defendant should be  
13 sentenced to death or life imprisonment as authorized by s.  
14 775.082. The proceeding shall be conducted by the trial judge  
15 before the trial jury as soon as practicable. If, through  
16 impossibility or inability, the trial jury is unable to  
17 reconvene for a hearing on the issue of penalty, having  
18 determined the guilt of the accused, the trial judge may  
19 summon a special juror or jurors as provided in chapter 913 to  
20 determine the issue of the imposition of the penalty. If the  
21 trial jury has been waived, or if the defendant pleaded  
22 guilty, the sentencing proceeding shall be conducted before a  
23 jury impaneled for that purpose, unless waived by the  
24 defendant. In the proceeding, evidence may be presented as to  
25 any matter that the court deems relevant to the nature of the  
26 crime and the character of the defendant and shall include  
27 matters relating to any of the aggravating or mitigating  
28 circumstances enumerated in subsections (5) and (6). Any such  
29 evidence which the court deems to have probative value may be  
30 received, regardless of its admissibility under the  
31 exclusionary rules of evidence, provided the defendant is

1 accorded a fair opportunity to rebut any hearsay statements.  
2 However, this subsection shall not be construed to authorize  
3 the introduction of any evidence secured in violation of the  
4 Constitution of the United States or the Constitution of the  
5 State of Florida. The state and the defendant or the  
6 defendant's counsel shall be permitted to present argument for  
7 or against sentence of death.

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

11 (a) Whether sufficient aggravating circumstances exist  
12 as enumerated in subsection (5);

13 (b) Whether sufficient mitigating circumstances exist  
14 which outweigh the aggravating circumstances found to exist;  
15 and

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

18 (3) FINDINGS IN SUPPORT OF SENTENCE OF  
19 DEATH.--Notwithstanding the recommendation of a majority of  
20 the jury, the court, after weighing the aggravating and  
21 mitigating circumstances, shall enter a sentence of life  
22 imprisonment or death, but if the court imposes a sentence of  
23 death, it shall set forth in writing its findings upon which  
24 the sentence of death is based as to the facts:

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

27 (b) That there are insufficient mitigating  
28 circumstances to outweigh the aggravating circumstances.

29  
30 In each case in which the court imposes the death sentence,  
31 the determination of the court shall be supported by specific



1 written findings of fact based upon the circumstances in  
2 subsections (5) and (6) and upon the records of the trial and  
3 the sentencing proceedings. If the court does not make the  
4 findings requiring the death sentence within 30 days after the  
5 rendition of the judgment and sentence, the court shall impose  
6 sentence of life imprisonment in accordance with s. 775.082.

7 (4) REVIEW OF JUDGMENT AND SENTENCE.--The judgment of  
8 conviction and sentence of death shall be subject to automatic  
9 review by the Supreme Court of Florida and disposition  
10 rendered within 2 years after the filing of a notice of  
11 appeal. Such review by the Supreme Court shall have priority  
12 over all other cases and shall be heard in accordance with  
13 rules promulgated by the Supreme Court.

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

16 (a) The capital felony was committed by a person  
17 previously convicted of a felony and under sentence of  
18 imprisonment or placed on community control or on felony  
19 probation.

20 (b) The defendant was previously convicted of another  
21 capital felony or of a felony involving the use or threat of  
22 violence to the person.

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

25 (d) The capital felony was committed while the  
26 defendant was engaged, or was an accomplice, in the commission  
27 of, or an attempt to commit, or flight after committing or  
28 attempting to commit, any: robbery; sexual battery; aggravated  
29 child abuse; abuse of an elderly person or disabled adult  
30 resulting in great bodily harm, permanent disability, or  
31 permanent disfigurement; arson; burglary; kidnapping; aircraft

1 piracy; or unlawful throwing, placing, or discharging of a  
2 destructive device or bomb.

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

6 (f) The capital felony was committed for pecuniary  
7 gain.

8 (g) The capital felony was committed to disrupt or  
9 hinder the lawful exercise of any governmental function or the  
10 enforcement of laws.

11 (h) The capital felony was especially heinous,  
12 atrocious, or cruel.

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

16 (j) The victim of the capital felony was a law  
17 enforcement officer engaged in the performance of his or her  
18 official duties.

19 (k) The victim of the capital felony was an elected or  
20 appointed public official engaged in the performance of his or  
21 her official duties if the motive for the capital felony was  
22 related, in whole or in part, to the victim's official  
23 capacity.

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

26 (m) The victim of the capital felony was particularly  
27 vulnerable due to advanced age or disability, or because the  
28 defendant stood in a position of familial or custodial  
29 authority over the victim.

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

1           (o) The capital felony was committed while the  
2 defendant was engaged in willfully violating an injunction for  
3 protection against domestic violence issued pursuant to s.  
4 741.30, a foreign protection order accorded full faith and  
5 credit pursuant to s. 741.315, an injunction for protection  
6 against repeat violence pursuant to s. 784.046, or after any  
7 other court-imposed prohibition of conduct toward the victim.

8           (6) MITIGATING CIRCUMSTANCES.--Mitigating  
9 circumstances shall be the following:

10           (a) The defendant has no significant history of prior  
11 criminal activity.

12           (b) The capital felony was committed while the  
13 defendant was under the influence of extreme mental or  
14 emotional disturbance.

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

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

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

22           (f) The capacity of the defendant to appreciate the  
23 criminality of his or her conduct or to conform his or her  
24 conduct to the requirements of law was substantially impaired.

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

26           (h) The existence of any other factors in the  
27 defendant's background that would mitigate against imposition  
28 of the death penalty.

29           (7) VICTIM IMPACT EVIDENCE.--Once the prosecution has  
30 provided evidence of the existence of one or more aggravating  
31 circumstances as described in subsection (5), the prosecution

1 may introduce, and subsequently argue, victim impact evidence.  
2 Such evidence shall be designed to demonstrate the victim's  
3 uniqueness as an individual human being and the resultant loss  
4 to the community's members by the victim's death.  
5 Characterizations and opinions about the crime, the defendant,  
6 and the appropriate sentence shall not be permitted as a part  
7 of victim impact evidence.

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

11 Section 6. This act shall take effect July 1, 1999.  
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