

By the Committee on Criminal Justice and Senators Mitchell, Sullivan, Casas, Dyer, Rossin, Klein, Forman, Latvala, Dawson, Horne, Clary, Holzendorf, Silver, Meek, Kurth, Campbell, King and Saunders

307-1960-00

1 A bill to be entitled

2 An act relating to the death penalty; creating

3 s. 921.137, F.S.; defining the term "mental

4 retardation"; prohibiting the imposition of a

5 sentence of death on a defendant who suffers

6 from mental retardation if the mental

7 retardation is directly related to the

8 defendant's conduct at the time of the crime;

9 providing requirements for raising mental

10 retardation as a bar to the death sentence;

11 providing for a separate proceeding to

12 determine whether the defendant suffers from

13 mental retardation; providing for an

14 determination of mental retardation to be

15 appealed; providing for application of

16 provisions prohibiting imposition of a sentence

17 of death; amending ss. 921.141, 921.142, F.S.;

18 providing for a defendant's mental retardation

19 to be considered as a mitigating circumstance

20 by the jury for purposes of the advisory

21 sentence recommended by the jury in a capital

22 felony or a capital drug-trafficking felony;

23 providing an effective date.

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25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Section 921.137, Florida Statutes, is

28 created to read:

29 921.137 Imposition of the death sentence upon a

30 mentally retarded defendant prohibited.--

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1 (1) As used in this section, the term "mental
2 retardation" means significantly subaverage general
3 intellectual functioning existing concurrently with deficits
4 in adaptive behavior and manifested during the period from
5 conception to age 18. The term "significantly subaverage
6 general intellectual functioning," for the purpose of this
7 section, means performance that is two or more standard
8 deviations from the mean score on a standardized intelligence
9 test specified in the rules of the Department of Children and
10 Family Services. The term "adaptive behavior," for the purpose
11 of this definition, means the effectiveness or degree with
12 which an individual meets the standards of personal
13 independence and social responsibility expected of his or her
14 age, cultural group, and community. The Department of Children
15 and Family Services shall adopt rules to administer this
16 subsection.

17 (2) A sentence of death may not be imposed upon a
18 defendant convicted of a capital felony who suffers from
19 mental retardation if the defendant's conduct at the time of
20 the commission of the crime is directly related to the mental
21 retardation.

22 (3) A defendant charged with a capital felony who
23 intends to raise mental retardation as a bar to the death
24 sentence under this section shall give notice of such
25 intention in accordance with the rules of court governing
26 notice of intent to rely on an insanity defense.

27 (4) When a defendant who has given proper notice of
28 intent to raise mental retardation as a bar to the death
29 sentence is convicted or adjudicated guilty of a capital
30 felony, the court must conduct a separate proceeding, without
31 the jury, to determine whether the defendant suffers from

1 mental retardation before conducting sentencing proceedings
2 under s. 921.141 or s. 921.142. If the court determines that
3 the defendant has demonstrated by clear and convincing
4 evidence that the defendant suffers from mental retardation,
5 the court shall enter a written order that sets forth with
6 specificity its findings in support of its determination that
7 the defendant suffers from mental retardation.

8 (5) The state may appeal, pursuant to s. 924.07, a
9 determination of mental retardation made under subsection (4).

10 (6) This section does not apply to a capital defendant
11 who was sentenced to death before the effective date of this
12 act.

13 Section 2. Subsection (6) of section 921.141, Florida
14 Statutes, is amended to read:

15 921.141 Sentence of death or life imprisonment for
16 capital felonies; further proceedings to determine sentence.--

17 (6) MITIGATING CIRCUMSTANCES.--Mitigating
18 circumstances shall be the following:

19 (a) The defendant has no significant history of prior
20 criminal activity.

21 (b) The capital felony was committed while the
22 defendant was under the influence of extreme mental or
23 emotional disturbance.

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

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

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

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

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

5 (h) The defendant suffers from mental retardation,
6 which shall be determined in accordance with the definition of
7 the term "retardation" in s. 393.063.

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

11 Section 3. Subsection (7) of section 921.142, Florida
12 Statutes, is amended to read:

13 921.142 Sentence of death or life imprisonment for
14 capital drug trafficking felonies; further proceedings to
15 determine sentence.--

16 (7) MITIGATING CIRCUMSTANCES.--Mitigating
17 circumstances shall include the following:

18 (a) The defendant has no significant history of prior
19 criminal activity.

20 (b) The capital felony was committed while the
21 defendant was under the influence of extreme mental or
22 emotional disturbance.

23 (c) The defendant was an accomplice in the capital
24 felony committed by another person, and the defendant's
25 participation was relatively minor.

26 (d) The defendant was under extreme duress or under
27 the substantial domination of another person.

28 (e) The capacity of the defendant to appreciate the
29 criminality of her or his conduct or to conform her or his
30 conduct to the requirements of law was substantially impaired.

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1 (f) The age of the defendant at the time of the
2 offense.

3 (g) The defendant could not have reasonably foreseen
4 that her or his conduct in the course of the commission of the
5 offense would cause or would create a grave risk of death to
6 one or more persons.

7 (h) The defendant suffers from mental retardation,
8 which shall be determined in accordance with the definition of
9 the term "retardation" in s. 393.063.

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

13 Section 4. This act shall take effect upon becoming a
14 law.

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16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 Senate Bill 1448

- 19 - Provides a definition of mental retardation consistent
20 with existing definitions in chapters 393 and 916.
21 - Provides that mental retardation is established for
22 purposes of exemption from the death penalty when the
23 defendant proves that the commission of the crime was
24 directly related to the mental retardation.
25 - Provides that the defendant must prove mental
26 retardation by "clear and convincing" standard of proof.
27 - Adds mental retardation to the list of enumerated
28 statutory mitigating factors.
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