

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Cosgrove offered the following:

Amendment (with title amendment)

On page 28, between lines 20 and 21, of the bill

insert:

Section 23. Section 921.137, Florida Statutes, is created to read:

921.137 Imposition of the death sentence upon a mentally retarded defendant prohibited.--

(1) As used in this section, the term "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Department of Children and Family Services. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with

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1 which an individual meets the standards of personal
2 independence and social responsibility expected of his or her
3 age, cultural group, and community. The Department of Children
4 and Family Services shall adopt rules to administer this
5 subsection.

6 (2) A sentence of death may not be imposed upon a
7 defendant convicted of a capital felony who suffers from
8 mental retardation if the defendant's conduct at the time of
9 the commission of the crime is directly related to the mental
10 retardation.

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

16 (4) When a defendant who has given proper notice of
17 intent to raise mental retardation as a bar to the death
18 sentence is convicted or adjudicated guilty of a capital
19 felony, the court must conduct a separate proceeding, without
20 the jury, to determine whether the defendant suffers from
21 mental retardation before conducting sentencing proceedings
22 under s. 921.141 or s. 921.142. If the court determines that
23 the defendant has demonstrated by clear and convincing
24 evidence that the defendant suffers from mental retardation,
25 the court shall enter a written order that sets forth with
26 specificity its findings in support of its determination that
27 the defendant suffers from mental retardation.

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

30 (6) This section does not apply to a capital defendant
31 who was sentenced to death before the effective date of this

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1 act.

2 Section 24. Subsection (6) of section 921.141, Florida
3 Statutes, is amended to read:

4 921.141 Sentence of death or life imprisonment for
5 capital felonies; further proceedings to determine sentence.--

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

8 (a) The defendant has no significant history of prior
9 criminal activity.

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

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

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

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

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

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

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

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

30 Section 25. Subsection (7) of section 921.142, Florida
31 Statutes, is amended to read:

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1 921.142 Sentence of death or life imprisonment for
2 capital drug trafficking felonies; further proceedings to
3 determine sentence.--

4 (7) MITIGATING CIRCUMSTANCES.--Mitigating
5 circumstances shall include the following:

6 (a) The defendant has no significant history of prior
7 criminal activity.

8 (b) The capital felony was committed while the
9 defendant was under the influence of extreme mental or
10 emotional disturbance.

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

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

16 (e) The capacity of the defendant to appreciate the
17 criminality of her or his conduct or to conform her or his
18 conduct to the requirements of law was substantially impaired.

19 (f) The age of the defendant at the time of the
20 offense.

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

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

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

31 Section 26. This act shall take effect upon becoming a

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1 law.

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4 ===== T I T L E A M E N D M E N T =====

5 And the title is amended as follows:

6 On page 3, between lines 9 and 10,

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8 insert:

9 creating s. 921.137, F.S.; defining the term
10 "mental retardation"; prohibiting the
11 imposition of a sentence of death on a
12 defendant who suffers from mental retardation
13 if the mental retardation is directly related
14 to the defendant's conduct at the time of the
15 crime; providing requirements for raising
16 mental retardation as a bar to the death
17 sentence; providing for a separate proceeding
18 to determine whether the defendant suffers from
19 mental retardation; providing for an
20 determination of mental retardation to be
21 appealed; providing for application of
22 provisions prohibiting imposition of a sentence
23 of death; amending ss. 921.141, 921.142, F.S.;
24 providing for a defendant's mental retardation
25 to be considered as a mitigating circumstance
26 by the jury for purposes of the advisory
27 sentence recommended by the jury in a capital
28 felony or a capital drug-trafficking felony;

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