

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 2, lines 4-5

remove from the bill: all of said lines

and insert in lieu thereof:

Section 2. 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

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

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

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

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

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

31 (6) This section does not apply to a capital defendant

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1 who was sentenced to death before the effective date of this  
2 act.

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

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

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

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

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

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

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

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

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

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

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 4. Subsection (7) of section 921.142, Florida

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1 Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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1 Section 5. This act shall take effect upon becoming a  
2 law

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

6 And the title is amended as follows:

7 On page 1, line 7,

8  
9 after evidence; insert:

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

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