

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Roberts, Goodlette, Turnbull, and Heyman offered the following:

Amendment to Amendment (381421) (with title amendment)

On page 1, between lines 16 and 17,

insert:

Section 1. 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 2. 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 3. 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 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 36, line 4, of the amendment

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5 after "services;" insert:

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

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