

By Representative Roberts

1                                   A bill to be entitled  
2           An act relating to the sentencing of capital  
3           felons; amending ss. 921.141 and 921.142, F.S.;  
4           providing for a separate proceeding to  
5           determine if the defendant accused of or  
6           convicted of a capital felony is mentally  
7           retarded; prescribing the penalty to be imposed  
8           if the defendant is determined to be mentally  
9           retarded; requiring the defendant to raise the  
10          claim of mental retardation; providing  
11          circumstances under which such claim may be  
12          waived; defining mental retardation; providing  
13          an effective date.

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

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17           Section 1. Subsection (1) of section 921.141, Florida  
18 Statutes, is amended to read:

19           921.141 Sentence of death or life imprisonment for  
20 capital felonies; further proceedings to determine sentence.--

21           (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--

22           (a) Upon conviction or adjudication of guilt of a  
23 defendant of a capital felony, the court shall conduct a  
24 separate sentencing proceeding to determine whether the  
25 defendant should be sentenced to death or life imprisonment as  
26 authorized by s. 775.082. The proceeding shall be conducted by  
27 the trial judge before the trial jury as soon as practicable.  
28 If, through impossibility or inability, the trial jury is  
29 unable to reconvene for a hearing on the issue of penalty,  
30 having determined the guilt of the accused, the trial judge  
31 may summon a special juror or jurors as provided in chapter

1 913 to determine the issue of the imposition of the penalty.  
2 If the trial jury has been waived, or if the defendant pleaded  
3 guilty, the sentencing proceeding shall be conducted before a  
4 jury impaneled for that purpose, unless waived by the  
5 defendant. In the proceeding, evidence may be presented as to  
6 any matter that the court deems relevant to the nature of the  
7 crime and the character of the defendant and shall include  
8 matters relating to any of the aggravating or mitigating  
9 circumstances enumerated in subsections (5) and (6). may be  
10 received, regardless of its admissibility under the  
11 exclusionary rules of evidence, provided the defendant is  
12 accorded a fair opportunity to rebut any hearsay statements.  
13 However, this subsection shall not be construed to authorize  
14 the introduction of any evidence secured in violation of the  
15 Constitution of the United States or the Constitution of the  
16 State of Florida. The state and the defendant or the  
17 defendant's counsel shall be permitted to present argument for  
18 or against sentence of death.

19 (b) If the court determines, by clear and convincing  
20 evidence, that the defendant suffers from mental retardation,  
21 as defined in s. 916.106(12), the court shall sentence the  
22 defendant to life imprisonment. The defendant shall bear the  
23 burden of persuasion to demonstrate that he or she is mentally  
24 retarded. The failure of the defendant to raise the claim that  
25 he or she is mentally retarded at the sentencing phase shall  
26 waive any such claim. No postconviction claim may be based on  
27 the assertion that a defendant could have or should have been  
28 sentenced to life imprisonment based on the defendant's  
29 alleged mental retardation. This claim may only be raised in  
30 capital criminal prosecutions occurring after the effective  
31 date of this act and may not be raised in any postconviction

1 proceeding. This claim may only be raised in the guilt phase  
2 of a capital criminal proceeding. For purposes of this  
3 section, "mental retardation" means significantly subaverage  
4 intellectual functioning existing concurrently with deficits  
5 in adaptive behavior and manifested during the period from  
6 conception to age 18. "Adaptive behavior," for the purpose of  
7 this definition, means the effectiveness with which an  
8 individual meets the standards of personal independence and  
9 social responsibility expected of a person of the individual's  
10 age, cultural group, and community.

11 Section 2. Subsection (2) 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 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--

17 (a) Upon conviction or adjudication of guilt of a  
18 defendant of a capital felony under s. 893.135, the court  
19 shall conduct a separate sentencing proceeding to determine  
20 whether the defendant should be sentenced to death or life  
21 imprisonment as authorized by s. 775.082. The proceeding  
22 shall be conducted by the trial judge before the trial jury as  
23 soon as practicable. If, through impossibility or inability,  
24 the trial jury is unable to reconvene for a hearing on the  
25 issue of penalty, having determined the guilt of the accused,  
26 the trial judge may summon a special juror or jurors as  
27 provided in chapter 913 to determine the issue of the  
28 imposition of the penalty. If the trial jury has been waived,  
29 or if the defendant pleaded guilty, the sentencing proceeding  
30 shall be conducted before a jury impaneled for that purpose,  
31 unless waived by the defendant. In the proceeding, evidence

1 may be presented as to any matter that the court deems  
2 relevant to the nature of the crime and the character of the  
3 defendant and shall include matters relating to any of the  
4 aggravating or mitigating circumstances enumerated in  
5 subsections (6) and (7). Any such evidence which the court  
6 deems to have probative value may be received, regardless of  
7 its admissibility under the exclusionary rules of evidence,  
8 provided the defendant is accorded a fair opportunity to rebut  
9 any hearsay statements. However, this subsection shall not be  
10 construed to authorize the introduction of any evidence  
11 secured in violation of the Constitution of the United States  
12 or the Constitution of the State of Florida. The state and the  
13 defendant or the defendant's counsel shall be permitted to  
14 present argument for or against sentence of death.

15 (b) If the court determines, by clear and convincing  
16 evidence, that the defendant suffers from mental retardation,  
17 as defined in s. 916.106(12), the court shall sentence the  
18 defendant to life imprisonment. The defendant shall bear the  
19 burden of persuasion to demonstrate that he or she is mentally  
20 retarded. The failure of the defendant to raise the claim that  
21 he or she is mentally retarded at the sentencing phase shall  
22 waive any such claim. No postconviction claim may be based on  
23 the assertion that a defendant could have or should have been  
24 sentenced to life imprisonment based on the defendant's  
25 alleged mental retardation. This claim may only be raised in  
26 capital criminal prosecutions occurring after the effective  
27 date of this act and may not be raised in any postconviction  
28 proceeding. This claim may only be raised in the guilt phase  
29 of a capital criminal proceeding. For purposes of this  
30 section, "mental retardation" means significantly subaverage  
31 intellectual functioning existing concurrently with deficits

1 in adaptive behavior and manifested during the period from  
2 conception to age 18. "Adaptive behavior," for the purpose of  
3 this definition, means the effectiveness with which an  
4 individual meets the standards of personal independence and  
5 social responsibility expected of a person of the individual's  
6 age, cultural group, and community.

7 Section 3. This act shall take effect October 1, 2000.

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10 HOUSE SUMMARY

11 Provides for a separate proceeding to determine if the  
12 defendant accused of or convicted of a capital felony is  
13 mentally retarded. Prescribes the penalty to be imposed  
14 if the defendant is determined to be mentally retarded.  
15 Requires the defendant to raise the claim of mental  
16 retardation. Provides circumstances under which such  
17 claim may be waived. Defines mental retardation.  
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