

By Representatives Green, Goodlette, Spratt, Kottkamp, Littlefield, Murman, Argenziano, Detert, Rubio, Barreiro, Kilmer, Negron and Farkas

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 has mental  
6           retardation; providing requirements for raising  
7           mental retardation as a bar to the death  
8           sentence; providing for a separate proceeding  
9           to determine whether the defendant has mental  
10          retardation; providing for a determination of  
11          mental retardation to be appealed; providing  
12          for application of provisions prohibiting  
13          imposition of a sentence of death; providing an  
14          effective date.

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

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18           Section 1.   Section 921.137, Florida Statutes, is  
19 created to read:

20                   921.137 Imposition of the death sentence upon a  
21 mentally retarded defendant prohibited.--

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

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 specify the  
6 standardized intelligence tests as provided in this  
7 subsection.

8 (2) A sentence of death may not be imposed upon a  
9 defendant convicted of a capital felony if it is determined in  
10 accordance with the provisions outlined herein that the  
11 defendant has mental retardation.

12 (3) A defendant charged with a capital felony who  
13 intends to raise mental retardation as a bar to a death  
14 sentence must give notice of such intention in accordance with  
15 the rules of court governing notices of intent to offer expert  
16 testimony regarding mental health mitigation during the  
17 penalty phase of a capital trial.

18 (4) After a defendant who has given notice of his or  
19 her intention to raise mental retardation as a bar to the  
20 death sentence is convicted of a capital offense and an  
21 advisory jury has returned a recommended sentence of death,  
22 the defendant may file a motion to determine whether the  
23 defendant has mental retardation. Upon receipt of the motion,  
24 the court shall appoint two experts in the field of mental  
25 retardation who shall evaluate the defendant and report their  
26 findings to the court and all interested parties prior to the  
27 final sentencing hearing. Notwithstanding s. 921.141 or s.  
28 921.142, the final sentencing hearing shall be without a jury.  
29 At the final sentencing hearing, the court shall consider the  
30 findings of the court-appointed experts and consider the  
31 findings of any other experts offered by the state or defense

1 as to whether the defendant has mental retardation. If the  
2 court finds by clear and convincing evidence that the  
3 defendant has mental retardation as defined in subsection (1),  
4 the court shall not impose a sentence of death and shall enter  
5 a written order that sets forth with specificity the findings  
6 in support of the determination.

7 (5) If after either entering a plea of guilty or nolo  
8 contendere to a capital felony and being adjudicated guilty by  
9 the court, or a jury has returned a verdict of guilt to a  
10 capital felony, then a defendant waives his or her right to a  
11 recommended sentence by an advisory jury, the defendant may,  
12 upon acceptance of the waiver by the court, file a motion to  
13 determine whether the defendant has mental retardation,  
14 provided the defendant has given the state notice as required  
15 by subsection (3). Upon receipt of the motion, the court shall  
16 proceed as provided in subsection (4).

17 (6) When an advisory jury returns a recommendation of  
18 a life sentence and the state intends to request the court to  
19 order the defendant sentenced to death, the state shall inform  
20 any defendant that has given notice of his or her intent to  
21 raise mental retardation as a bar to the death penalty. Any  
22 defendant, after receipt of such notice from the state, may  
23 file a motion requesting the court to determine mental  
24 retardation. Upon request of such motion, the court shall  
25 proceed as outlined in subsection (4).

26 (7) The state may appeal, pursuant to s. 924.07, a  
27 determination of mental retardation made under subsection (4).

28 (8) This section shall not apply to a defendant who  
29 was sentenced to death prior to the date of this act.

30 Section 2. This act shall take effect upon becoming a  
31 law.

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HOUSE SUMMARY

Prohibits imposition of a sentence of death upon a defendant charged with a capital felony who has mental retardation. Requires that the court conduct a separate proceeding without a jury if a defendant notifies the court of his or her intent to raise mental retardation as a bar to the death sentence. Provides that the state may appeal a determination of mental retardation. Defines the term "mental retardation" for purposes of the act. See bill for details.