

By the Committee on State Administration and
Representatives Green, Goodlette, Spratt, Kottkamp,
Littlefield, Murman, Argenziano, Detert, Rubio, Barreiro,
Kilmer, Negron, Farkas, Crow, Byrd, Bilirakis, Russell,
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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 a defendant waives his or her right to a
8 recommended sentence by an advisory jury following a plea of
9 guilty or nolo contendere to a capital felony and adjudication
10 of guilt by the court, or following a jury verdict of guilty
11 of a capital felony, upon acceptance of the waiver by the
12 court, a defendant who has given notice as required in
13 subsection (3) may file a motion for a determination of mental
14 retardation. Upon granting the motion, the court shall proceed
15 as provided in subsection (4).

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

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

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

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

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