

By Senators Mitchell, Sullivan, Sebesta, Jones, Dawson, Holzendorf, Wasserman Schultz, Latvala, Horne, Clary, Rossin, Meek, Dyer, Lawson, Garcia, Lee and Silver

4-203-01

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 suffers

6           from mental retardation if the mental

7           retardation is directly related to the

8           defendant's conduct at the time of the crime;

9           providing requirements for raising mental

10          retardation as a bar to the death sentence;

11          providing for a separate proceeding to

12          determine whether the defendant suffers from

13          mental retardation; providing for an

14          determination of mental retardation to be

15          appealed; providing for application of

16          provisions prohibiting imposition of a sentence

17          of death; amending ss. 921.141, 921.142, F.S.;

18          providing for a defendant's mental retardation

19          to be considered as a mitigating circumstance

20          by the jury for purposes of the advisory

21          sentence recommended by the jury in a capital

22          felony or a capital drug-trafficking felony;

23          providing an effective date.

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

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27           Section 1. Section 921.137, Florida Statutes, is

28 created to read:

29           921.137 Imposition of the death sentence upon a

30 mentally retarded defendant prohibited.--

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1           (1) As used in this section, the term "mental  
2 retardation" means significantly subaverage general  
3 intellectual functioning existing concurrently with deficits  
4 in adaptive behavior and manifested during the period from  
5 conception to age 18. The term "significantly subaverage  
6 general intellectual functioning," for the purpose of this  
7 section, means performance that is two or more standard  
8 deviations from the mean score on a standardized intelligence  
9 test specified in the rules of the Department of Children and  
10 Family Services. The term "adaptive behavior," for the purpose  
11 of this definition, means the effectiveness or degree with  
12 which an individual meets the standards of personal  
13 independence and social responsibility expected of his or her  
14 age, cultural group, and community. The Department of Children  
15 and Family Services shall adopt rules to specify the  
16 standardized intelligence tests as provided in this  
17 subsection.

18           (2) A sentence of death may not be imposed upon a  
19 defendant convicted of a capital felony who suffers from  
20 mental retardation if the defendant's conduct at the time of  
21 the commission of the crime is directly related to the mental  
22 retardation.

23           (3) A defendant charged with a capital felony who  
24 intends to raise mental retardation as a bar to the death  
25 sentence under this section must give notice of such intention  
26 in accordance with the rules of court governing notice of  
27 intent to rely on an insanity defense.

28           (4) When a defendant who has given proper notice of  
29 intent to raise mental retardation as a bar to the death  
30 sentence is convicted or adjudicated guilty of a capital  
31 felony, the court must conduct a separate proceeding, without

1 the jury, to determine the applicability of subsection (2)  
2 before conducting sentencing proceedings under s. 921.141 or  
3 s. 921.142. If the court determines that the defendant has  
4 demonstrated by clear and convincing evidence that a sentence  
5 of death may not be imposed pursuant to subsection (2), the  
6 court shall enter a written order that sets forth with  
7 specificity its findings in support of its determination.

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

10 (6) This section does not apply to a capital defendant  
11 who was sentenced to death before the effective date of this  
12 act.

13 Section 2. Subsection (6) of section 921.141, Florida  
14 Statutes, is amended to read:

15 921.141 Sentence of death or life imprisonment for  
16 capital felonies; further proceedings to determine sentence.--

17 (6) MITIGATING CIRCUMSTANCES.--Mitigating  
18 circumstances shall be the following:

19 (a) The defendant has no significant history of prior  
20 criminal activity.

21 (b) The capital felony was committed while the  
22 defendant was under the influence of extreme mental or  
23 emotional disturbance.

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

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

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

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1           (f) The capacity of the defendant to appreciate the  
2 criminality of his or her conduct or to conform his or her  
3 conduct to the requirements of law was substantially impaired.

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

5           (h) The defendant suffers from mental retardation,  
6 which must be determined in accordance with the definition of  
7 the term "mental retardation" in s. 921.137.

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

11           Section 3. Subsection (7) 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           (7) MITIGATING CIRCUMSTANCES.--Mitigating  
17 circumstances shall include the following:

18           (a) The defendant has no significant history of prior  
19 criminal activity.

20           (b) The capital felony was committed while the  
21 defendant was under the influence of extreme mental or  
22 emotional disturbance.

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

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

28           (e) The capacity of the defendant to appreciate the  
29 criminality of her or his conduct or to conform her or his  
30 conduct to the requirements of law was substantially impaired.

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