

By the Committee on Criminal Justice and Senators Mitchell, Sullivan, Sebesta, Jones, Dawson, Holzendorf, Wasserman Schultz, Latvala, Horne, Clary, Rossin, Meek, Dyer, Lawson, Garcia, Lee, Silver, Campbell, Smith and Miller

307-823-01

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 imposition of the

5 sentence of death if the court determines that

6 the defendant suffers from mental retardation;

7 requiring that a defendant notify the court of

8 an intention to raise mental retardation as a

9 bar to the sentence of death; providing

10 requirements for the court in determining

11 whether the defendant suffers from mental

12 retardation; providing that the sentence of

13 death may not be imposed unless the court finds

14 by clear and convincing evidence that the

15 defendant suffers from mental retardation;

16 requiring notice to the defendant if the state

17 requests a sentence of death, notwithstanding

18 the jury's recommendation for life

19 imprisonment; authorizing the state to appeal a

20 determination of mental retardation; providing

21 for application of the act; providing an

22 effective date.

23

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

25

26 Section 1. Section 921.137, Florida Statutes, is

27 created to read:

28 921.137 Imposition of the death sentence upon a

29 mentally retarded defendant prohibited.--

30 (1) As used in this section, the term "mental

31 retardation" means significantly subaverage general

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

16 (2) A sentence of death may not be imposed upon a
17 defendant convicted of a capital felony if it is determined in
18 accordance with this section that the defendant suffers from
19 mental retardation.

20 (3) A defendant charged with a capital felony who
21 intends to raise mental retardation as a bar to the death
22 sentence must give notice of such intention in accordance with
23 the rules of court governing notices of intent to offer expert
24 testimony regarding mental-health mitigation during the
25 penalty phase of a capital trial.

26 (4) After a defendant who has given notice of his or
27 her intention to raise mental retardation as a bar to the
28 death sentence is convicted of a capital felony and an
29 advisory jury has returned a recommended sentence of death,
30 the defendant may file a motion to determine whether the
31 defendant suffers from mental retardation. Upon receipt of the

1 motion, the court shall appoint two experts in the field of
2 mental retardation who shall evaluate the defendant and report
3 their findings to the court and all interested parties prior
4 to the final sentencing hearing. Notwithstanding s. 921.141 or
5 s. 912.142, the final sentencing hearing shall be held without
6 a jury. At the final sentencing hearing, the court shall
7 consider the findings of the court-appointed experts and
8 consider the findings of any other expert which is offered by
9 the state or the defense on the issue of whether the defendant
10 suffers from mental retardation. If the court finds, by clear
11 and convincing evidence, that the defendant suffers from
12 mental retardation as defined in subsection (1), the court may
13 not impose a sentence of death and shall enter a written order
14 that sets forth with specificity the findings in support of
15 the determination.

16 (5) If a defendant waives his or her right to a
17 recommended sentence by an advisory jury following a plea of
18 guilt or nolo contendere to a capital felony and adjudication
19 of guilt by the court, or following a jury finding of guilt of
20 a capital felony, upon acceptance of the waiver by the court,
21 a defendant who has given notice as required in subsection (3)
22 may file a motion for a determination of mental retardation.
23 Upon granting the motion, the court shall proceed as provided
24 in subsection (4).

25 (6) If, following a recommendation by an advisory jury
26 that the defendant be sentenced to life imprisonment, the
27 state intends to request the court to order that the defendant
28 be sentenced to death, the state must inform the defendant of
29 such request if the defendant has notified the court of his or
30 her intent to raise mental retardation as a bar to the death
31 sentence. After receipt of the notice from the state, the

1 defendant may file a motion requesting a determination by the
2 court of whether the defendant suffers from mental
3 retardation. Upon granting the motion, the court shall proceed
4 as provided in subsection (4).

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

7 (8) This section does not apply to a defendant who was
8 sentenced to death prior to the effective date of this act.

9 Section 2. This act shall take effect upon becoming a
10 law.

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12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 238

- 15 1. Provides that a person who is found by the court to be
16 mentally retarded shall not receive the death sentence.
17 Removes the requirement that the defendant's conduct at
the time of the crime be directly related to mental
retardation.
- 18 2. Changes the reference to the rule of court which will
19 govern the defendant's notice requirements for purposes
20 of reliance on mental retardation as a bar to the death
penalty.
- 21 3. Sets forth procedures to be followed under various
22 circumstances including: where the defendant is found
23 guilty at trial and the advisory jury has recommended
24 the death sentence; where the defendant is found guilty
25 at trial and the advisory jury has recommended life
imprisonment but the state still seeks the death
26 penalty; where the defendant has been found guilty at
27 trial or entered a plea to a capital offense and waived
the right to an advisory jury.
- 28 4. Provides for the appointment of two experts in the area
29 of mental retardation by the court, and allows the state
30 and the defense to call additional experts at the final
sentencing hearing.
- 31 5. Deletes the provisions which added mental retardation to
the list of statutory mitigating factors under s.
921.141 and 921.142, F.S.