

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 has mental retardation; requiring
7 that a defendant notify the court of an
8 intention to raise mental retardation as a bar
9 to the sentence of death; providing
10 requirements for the court in determining
11 whether the defendant has mental retardation;
12 providing that the sentence of death may not be
13 imposed unless the court finds by clear and
14 convincing evidence that the defendant has
15 mental retardation; requiring notice to the
16 defendant if the state requests a sentence of
17 death, notwithstanding the jury's
18 recommendation for life imprisonment;
19 authorizing the state to appeal a determination
20 of mental retardation; providing for
21 application of the act; providing an effective
22 date.

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

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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 has mental
19 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 has mental retardation. Upon receipt of the motion,

1 the court shall appoint two experts in the field of mental
2 retardation who shall evaluate the defendant and report their
3 findings to the court and all interested parties prior to the
4 final sentencing hearing. Notwithstanding s. 921.141 or s.
5 921.142, the final sentencing hearing shall be held without a
6 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 has mental retardation. If the court finds, by clear and
11 convincing evidence, that the defendant has mental retardation
12 as defined in subsection (1), the court may not impose a
13 sentence of death and shall enter a written order that sets
14 forth with specificity the findings in support of the
15 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 has mental retardation. Upon
3 granting the motion, the court shall proceed as provided in
4 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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